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Thursday
May 13, 1999

Briefings on how to use the Federal Register

For information on briefings in Washington, DC, see
announcement on the inside cover of this issue.

Federal Register



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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 18, 1999 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202-523-4538



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Title 3—**Proclamation 7195 of May 10, 1999****The President****Peace Officers Memorial Day and Police Week, 1999****By the President of the United States of America****A Proclamation**

Whether working in big cities, suburban communities, or small rural towns, America's law enforcement officers serve each day as a defense against the forces of crime and brutality. These courageous men and women defend our lives with their own. All too often they pay the ultimate price for their dedication, as America saw again this past year when an armed intruder invaded the United States Capitol and gunned down Officer Jacob J. Chestnut and Detective John M. Gibson. These brave men were husbands, fathers, neighbors, and friends. We must honor and remember their sacrifice and the loss of the loved ones they left behind.

We must also remember that the heroes who died defending the U.S. Capitol were just 2 of the 61 law enforcement officers killed in the line of duty last year. Firearms took all but 3 of these lives. In addition, 78 officers died in tragic accidents. All of their memories live on, not only with their friends and families, but also in the hearts of all of us who enjoy safer, more peaceful lives because of their dedicated service.

This week we honor with special gratitude the nearly 600,000 highly trained law enforcement personnel who serve our Nation each day. Whether working undercover against drug pushers, gang leaders, and terrorists; apprehending fugitives; responding to domestic violence calls; or arresting drunk drivers, these courageous men and women uphold their pledge to preserve the peace and promote the public's safety. In large part because of their skill and determination, crime rates in our Nation have fallen to the lowest point in 25 years, with the murder rate at its lowest level in 30 years. But the war on crime is a constant and dangerous struggle, and during Police Week—and especially on Peace Officers Memorial Day—we honor those who serve on the front lines of that battle.

By a joint resolution approved October 1, 1962 (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week," and, by Public Law 103-322 (36 U.S.C. 167), has requested that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 15, 1999, as Peace Officers Memorial Day and May 9 through 15, 1999, as Police Week. I call upon the people of the United States to observe these occasions with appropriate ceremonies, programs, and activities. I also request the Governors of the States and of the Commonwealth of Puerto Rico, as well as the appropriate officials of all units of government, to direct that the flag of the United States be flown at half-staff on Peace Officers Memorial Day on all buildings, grounds, and naval vessels throughout the United States and all areas under its jurisdiction and control. I also invite all Americans to display the flag at half-staff from their homes on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William Clinton

[FR Doc. 99-12269

Filed 5-12-99; 8:45 am]

Billing code 3195-01-P

Rules and Regulations

Federal Register

Vol. 64, No. 92

Thursday, May 13, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 99-022-1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by adding commuted traveltime allowances for travel between various locations in Iowa. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Smith, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1236; (301) 734-8415; or e-mail: jim.f.smith@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain

plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States.

When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time require for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances for travel between various locations in Iowa. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking procedure would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provision of 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and

Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provision or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provision of this rule or the application of its provisions.

Paperwork Reduction Act

The rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant disease and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS, AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 354.2 is amended by adding in the table, in alphabetical order, under Iowa, the following entries to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES
[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
[Add]			
	* * * * *		
Iowa:			
Davenport	Des Moines		6
	* * * * *		
Sioux City	Des Moines		6
Undesignated ports	Des Moines		6
	* * * * *		

Done in Washington, DC, this 6th day of May 1999.

Joan M. Arnold,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-12147 Filed 5-12-99; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM154, Special Conditions No. 25-99-273-SC]

Special Conditions: Dornier Model 328-300 Airplane; High Intensity Radiated Fields (HIRF).

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dornier Model 328-300 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 15, 1999. Comments must be received on or before June 28, 1999.

ADDRESSES: Comments on these special conditions may be mailed in duplicate

to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM154, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM154. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-1503; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the

docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM154." The postcard will be date stamped and returned to the commenter.

Background

On November 14, 1996, the Luftfahrt-Bundesamt (LBA) applied on behalf of Dornier Luftfahrt GmbH for an amendment to U.S. Type Certificate No. A45NM to include the new Dornier Model 328-300. The Model 328-300, which is a modification of the Dornier Model 328-100 approved under Type Certificate No. A45NM, will be a 32-34 passenger airplane with a pressurized cabin and a maximum takeoff weight of 33,510 pounds (15200 kg). The Model 328-300 is of a high-wing configuration, with twin turboprop engines mounted underneath the wings, and a horizontal tail mounted at the top of the vertical fin. The FAA subsequently determined that this airplane would require a new type certificate because the type of propulsion on this airplane is being changed from turboprop to turboprop.

The Dornier Model 328-300 incorporates an electronic flight instrument system (EFIS) for display of critical flight parameters (altitude, airspeed, and attitude) to the crew. These displays can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dornier Luftfahrt GmbH must show that the Model 328-300 airplane meets the applicable provisions of part 25 as amended by Amendments 1 through 87 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Dornier Model 328-300 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Dornier 328-300 will incorporate an electronic flight instrument system (EFIS) that performs critical functions. This system may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the applicable regulations, special conditions are needed for the Dornier 328-300, which require that new electrical and electronic systems, such as the EFIS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space

and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1, or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field Strength (volts per meter)					
	US		UK/European		Consolidated	
	Peak	Average	Peak	Average	Peak	Average
10 kHz-100 kHz	30	30	50	50	50	50
100 kHz-500 kHz	40	30	60	60	60	60
500 kHz-2 MHz	30	30	70	70	70	70
2 MHz-30 MHz	190	190	200	200	200	200
30 MHz-70 MHz	20	20	30	30	30	30
70 MHz-100 MHz	20	20	30	30	30	30
100 MHz-200 MHz	30	30	150	30	150	30
200 MHz-400 MHz	30	30	70	70	70	70
400 MHz-700 MHz	80	80	700	40	700	80
700 MHz-1 GHz	690	240	1700	80	1700	240
1 GHz-2 GHz	970	70	5000	360	5000	360
2 GHz-4 GHz	1570	350	4500	360	4500	360
4 GHz-6 GHz	7200	300	5200	300	7200	300
6 GHz-8 GHz	130	80	2000	330	2000	330
8 GHz-12 GHz	2100	80	3500	270	3500	270
12 GHz-18 GHz	500	330	3500	180	3500	330
18 GHz-40 GHz	780	20	NA	NA	780	20

The field strengths are expressed in terms of peak root-mean-square (rms) values.

Applicability

As discussed above, these special conditions are applicable to Dornier 328-300 Model airplane. Should Dornier Luftfahrt GmbH apply any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as

well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only Dornier Model 328-300 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay

would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dornier Model 328-300 airplane.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 15, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 99-12143 Filed 5-12-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-ANE-02; Amendment 39-11164; AD 99-10-11]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT8D-200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D-200 series turbofan engines, that currently requires periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of fan blade shrouds, and dimensional restoration of the fan blade leading edge. In addition, that AD requires installation of improved design fan blades as terminating action for the inspections. This AD will reduce the lubrication interval, and require removal of rotors that experience repeat lockups within 225 cycles in service. This supersedure is prompted by reports of twenty-five fan blade failures to date. The actions specified by the AD are intended to prevent fan blade failure, which can result in damage to the aircraft.

DATES: Effective June 14, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565-6600, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803-5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7128, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39)

by superseding airworthiness directive (AD) 96-23-15, Amendment 39-9821 (61 FR 63706, December 2, 1996), applicable to certain Pratt & Whitney (PW) JT8D-200 series turbofan engines, was published in the **Federal Register** on December 2, 1998 (63 FR 66500). That action proposed to require periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of fan blade shrouds, removal from service of fan rotors which experience repeat lockup events within 225 cycles in service, and dimensional restoration of the fan blade leading edge. In addition, that AD requires installation of improved design fan blades as terminating action for the inspections.

Since the issuance of that AD, the FAA has received reports of 7 additional fan blade failures on engines that had been inspected in accordance with the current AD, bringing the total of reported failures to 25. The fan blades are failing as a result of high cycle fatigue. Contributing factors are foreign object damage (FOD), leading edge erosion, manufacturing discrepancies, and locked fan shrouds. These fan blade failures indicate that the currently mandated fleet management plan is insufficient.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6241, Revision 2, dated June 29, 1998, that reduces the lubrication interval, and requires removal of rotors that experience repeat lockups within 225 cycles in service (CIS).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters concur with the rule as proposed. Two of these are already in compliance with the rule as proposed.

One commenter suggests that alternate method of compliance (AMOC) approvals for ADs 95-12-19 and 96-23-15 should be applicable to this AD, without requiring additional approval. The proposal only references AMOC approvals to 95-12-19. The FAA does not agree. This AD represents the third AD in a line of ADs addressing the fan blade shroud locking problem on PW JT8D-200 engines. Normally when an AD supersedes a previously issued AD, all AMOC approvals to the superseded AD cease on the effective date of the superseding AD, and operators must either comply with the requirements of the new AD or reapply for a new AMOC approval. On further review of the issue

of whether previous AMOC approvals should be allowed to continue in force, the FAA has determined that AMOC approvals for neither of the previous ADs should be allowed to continue in force after the effective date of this AD. The inspection requirements for ASB 6241, Rev. 2, dated June 29, 1998, incorporated in this AD, differ significantly from those of the current AD in that blades that experience repeat lockups within 225 cycles must be removed. Therefore, the FAA has determined to remove proposed paragraph (e) from the final rule. All AMOC approvals issued for either AD 95-12-19 or AD 96-23-15 will cease on the effective date of this AD.

One commenter believes that it is unnecessary to track repeat lockups and remove from service rotors that experience repeat lockups within 225 cycles, because the foreign object damage (FOD) checks and lubrication of the shrouds address the root cause of the problem. The FAA does not concur. Analysis of fan blade fracture events revealed a strong correlation between repeat lockup histories and subsequent fractures. The requirement to track lockup events and remove rotors which experience repeat lockups within 225 cycles is a key part of the fleet management proposal, and is required to provide the full safety benefit of this proposal. A statement clarifying the requirement to remove rotors from service per Part 3 of ASB6241 rev. 2 was added to paragraph (a) of this AD. Previously this was stated directly only in the Summary and Supplementary Information sections of the AD. Since comments indicate that operators implied that to be the case, this addition to paragraph (a) does not expand the scope of the AD or add any additional burden to operators.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 2,650 engines of the affected design in the worldwide fleet. The FAA estimates that 960 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take no additional work hours to perform these inspections except at a shorter lubrication interval. Rework costs for the fan blades are \$275 per blade, of which approximately \$140 per blade is attributable to this AD action. With the manufacturer's rebate of \$50 per blade, the total cost to industry of reworking these blades is \$2,750 per engine.

The manufacturer estimates that it will take 19 work hours per engine to

remove and reinstall the blades. Using labor costs of \$60 per work hour, the labor costs to remove and reinstall the blades are \$1,140 per engine. Hence, the increased costs generated by this proposed AD on U.S. operators is estimated to be \$3,890 per engine, or \$3,734,400 to retrofit the remaining 960 engines.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-9821 (61 FR 63706, December 2, 1996) and by adding a new airworthiness directive, Amendment 39-11164, to read as follows:

99-10-11

Pratt & Whitney: Amendment 39-11164.

Docket 96-ANE-02. Supersedes AD 96-23-15, Amendment 39-9821.

Applicability: Pratt & Whitney (PW) Models JT8D-209, -217, -217A, -217C, and -219 turbofan engines that have not incorporated PW Service Bulletin (SB) No. 6193, dated October 31, 1994, or with fan blades, Part Numbers (P/N's) 798821, 798821-001, 808121, 808121-001, 809221, 811821, 851121, 851121-001, 5000021-02, 5000021-022, and 5000021-032 installed. These engines are installed on but not limited to McDonnell Douglas MD-80 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan blade failure, which can result in damage to the aircraft, accomplish the following:

(a) Inspect fan blades and shrouds, unlock fan blade shrouds, lubricate fan blade shrouds, restore leading edge dimensions, remove from service those fan rotors which experience repeat lockup events within 225 cycles, and modify or install improved design fan blades in accordance with the schedule and procedures described in Parts 1, 2, and 3 of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. A6241, Revision 2, dated June 29, 1998.

(b) Modification of fan blades to the improved design configuration or installation of improved design fan blades in accordance with Part 3 of the Accomplishment Instructions of PW ASB No. A6241, Revision 2, dated June 29, 1998, constitutes terminating action to the inspections and maintenance actions described in paragraph (a) of this AD.

(c) For the purpose of this AD, the accomplishment effective date to be used for determination of compliance intervals, as required by Section 2 of PW ASB No. A6241, Revision 2, dated June 29, 1998, is defined as the effective date of this AD.

(d) For the purpose of this AD, "repair" as specified in Part 3, Paragraph A. (1)(b) of the Accomplishment Instructions of PW ASB No. A6241, Revision 2, dated June 29, 1998 is defined as the modification of fan blades to incorporate the revised shroud angle, cutback the leading edge, and restore leading edge dimensions in accordance with Part 3, Paragraph C of the Accomplishment

Instructions of PW ASB No. A6241, Revision 2, dated June 29, 1998.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may

add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be accomplished in accordance with the following Pratt & Whitney ASB:

Document No.	Pages	Revision	Date
A6241 Total pages: 14.	1-14	Rev. 2	June 29, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132-30, 400 Main St., East Hartford, CT 06108; telephone (860) 565-7700, fax (860) 565-4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 14, 1999.

Issued in Burlington, Massachusetts, on May 4, 1999.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate,

Aircraft Certification Service.

[FR Doc. 99-11635 Filed 5-12-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-232-AD; Amendment 39-11167; AD 99-10-14]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-400, 757, 767, and 777 Series Airplanes Equipped With AlliedSignal RIA-35B Instrument Landing System (ILS) Receivers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747-400, 757, 767, and 777 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to prohibit certain types of approaches. That action also requires repetitive inspections to detect certain faults of all

RIA-35B ILS receivers, and replacement of discrepant ILS receivers with new, serviceable, or modified units; or, alternatively, an additional revision to the AFM and installation of a placard to prohibit certain operations. That AD was prompted by a report of errors in the glide slope deviation provided by an ILS receiver. This amendment requires accomplishment of the previously optional terminating action. The actions specified by this AD are intended to prevent erroneous localizer deviation provided by faulty ILS receivers, which could result in a landing outside the lateral boundary of the runway.

DATES: Effective June 17, 1999.

The incorporation by reference of AlliedSignal Electronic and Avionics Systems Service Bulletin M-4426 (RIA-35B-34-6), Revision 3, dated May 1998, was approved previously by the Director of the Federal Register as of July 22, 1998 (63 FR 36549, July 7, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Jay Yi, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1013; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98-14-10, amendment 39-10643 (63 FR 36549, July 7, 1998), which is applicable to certain Boeing Model 747-400, 757, 767, and 777 series airplanes, was published in the **Federal Register** on

October 26, 1998 (63 FR 57078). The action proposed to require a revision to the Airplane Flight Manual (AFM) to prohibit certain types of approaches, and repetitive inspections to detect certain faults of all RIA-35B ILS receivers. The action also proposed to require replacement of discrepant ILS receivers with new, serviceable, or modified units; or, alternatively, an additional revision to the AFM and installation of a placard to prohibit certain operations. In addition, the action proposed to require accomplishment of the previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule. Two commenters indicate that they are not affected by the proposed rule. Another commenter states that it has already accomplished the proposed terminating action.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 74 airplanes of the affected design in the worldwide fleet. The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD.

The AFM revision to prohibit certain types of approaches that currently is required by AD 98-14-10, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required AFM revision on U.S. operators is estimated to be \$4,440, or \$60 per airplane.

In lieu of the AFM revision and placard installation to prohibit certain types of operations, the visual inspection that currently is provided in AD 98-14-10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be \$4,440, or \$60 per airplane, per inspection cycle.

In lieu of the visual inspection, the AFM revision and placard installation that currently is provided in AD 98-14-10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the AFM revision and placard installation on U.S. operators is estimated to be \$4,440, or \$60 per airplane.

The new replacement that is required in this AD action will take approximately 3 work hours per airplane (1 work hour per receiver, 3 receivers per airplane) to accomplish, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$235 per airplane (\$78.33 per receiver). Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be \$30,710, or \$415 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy

of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-10643 (63 FR 36549, July 7, 1998), and by adding a new airworthiness directive (AD), amendment 39-11167, to read as follows:

99-10-14 Boeing: Amendment 39-11167. Docket 98-NM-232-AD. Supersedes AD 98-14-10, Amendment 39-10643.

Applicability: Model 747-400, 757, 767, and 777 series airplanes; equipped with AlliedSignal RIA-35B Instrument Landing System (ILS) receivers, part number (P/N) 066-50006-0101, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent erroneous localizer deviation provided by faulty ILS receivers, which could result in a landing outside the lateral boundary of the runway, accomplish the following:

Restatement of the Requirements of AD 98-14-10

(a) Within 10 days after July 22, 1998 (the effective date of AD 98-14-10, amendment 39-10643), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement.

This may be accomplished by inserting a copy of this AD into the AFM.

"Any Instrument Landing System (ILS) or Localizer approach with only one operative AlliedSignal ILS receiver, P/N 066-50006-0101, installed is prohibited."

Note 2: On Model 747-400 and 777 series airplanes, the existence of only one operative ILS receiver is indicated by the Engine Indication and Crew Alerting System advisory message, "SINGL SOURCE ILS." On Model 757 and 767 series airplanes, failure of an ILS receiver is indicated by an ILS flag on the display of the Electronic Flight Instrument System when approach mode is selected.

(b) Within 30 days after July 22, 1998, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD.

(1) Perform a visual inspection of the 64 flight legs of the internal fault memory of all AlliedSignal RIA-35B ILS receivers, P/N 066-50006-0101, for fault codes "N1" (glide slope antialias fault) or "Nm" (localizer antialias fault). Repeat the inspection thereafter at intervals not to exceed 64 flight cycles. If any fault code "N1" or "Nm" is found, prior to further flight, replace the existing ILS receiver with a new or serviceable ILS receiver having the same P/N; or with an ILS receiver that has been modified to P/N 066-50006-1101 in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M-4426 (RIA-35B-34-6), Revision 3, dated May 1998. Installation of an ILS receiver that has been modified (and the P/N converted) in accordance with the service bulletin constitutes terminating action for the inspection requirement of paragraph (b)(1) of this AD for that part.

(2) Accomplish the actions required by paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Revise the Limitations Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"Category II and III operations are prohibited with AlliedSignal ILS receiver P/N 066-50006-0101 installed."

(ii) Install a placard on the forward instrument panel of the cockpit in clear view of the pilots, which states:

"Category II and III operations are prohibited."

(c) As of July 22, 1998, no person shall install on any airplane an RIA-35B ILS receiver, P/N 066-50006-0101, that has been found to be discrepant (that is, on which fault codes "N1" or "Nm" were found during an inspection of the internal fault memory) unless the discrepancy has been corrected by modifying the ILS receiver in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M-4426 (RIA-35B-34-6), Revision 3, dated May 1998.

New Requirements of This AD

(d) Within 6 months after the effective date of this AD, replace all existing RIA-35B ILS receivers, P/N 066-50006-0101, with RIA-35B ILS receivers that have been modified in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M-4426 (RIA-35B-34-6), Revision 3, dated May 1998; and that have had their P/N's

converted to 066-50006-1101. Such replacement constitutes terminating action for the requirements of this AD. After the replacement has been accomplished, the AFM limitations required by paragraphs (a) and (b)(2)(i) of this AD may be removed from the AFM, and the placard required by (b)(2)(ii) may be removed from the cockpit.

Note 3: Modification of all AlliedSignal RIA-35B ILS receivers, P/N 066-50006-0101, prior to July 22, 1998, in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M-4426 (RIA-35B-34-6), dated December 1997; Revision 1, dated January 1998; or Revision 2, dated April 1998; is considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The modification shall be done in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M-4426 (RIA-35B-34-6), Revision 3, dated May 1998. The incorporation by reference of this document was approved previously by the Director of the Federal Register as of July 22, 1998 (63 FR 36549, July 7, 1998). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 17, 1999.

Issued in Renton, Washington, on May 4, 1999.

D.L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 99-11782 Filed 5-12-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ANM-02]

Amendment of Class E Airspace; Colstrip, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Colstrip, MT, Class E airspace by providing additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Colstrip Airport.

EFFECTIVE DATE: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM-520.6, Federal Aviation Administration, Docket No. 99-ANM-2, 1601 Lind Avenue S.W., Renton, Washington, 98055-4056; telephone number: (425) 227-2527.

SUPPLEMENTARY INFORMATION:

History

On Monday 11, 1999, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Colstrip, MT, Class E airspace area (64 FR 12126). This revision provides the additional airspace necessary to encompass the new GPS Runway 6 and the GPS Runway 24 SIAP's to the Colstrip Airport, Colstrip, MT. This amendment provides a lower Class E airspace area to the west in order to meet current criteria standards associated with SIAP holding patterns. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Colstrip, MT, by providing the additional airspace necessary to fully contain new

flight procedures at Colstrip Airport. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Colstrip Airport and between the terminal and en route transition stages.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp. p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Colstrip, MT [Revised]

Colstrip Airport, Colstrip, MT

(Lat. 45°51'10"N, long. 106°42'34"W)

That airspace extending upward from 700 feet above the surface within a 13.5-mile radius of Colstrip Airport; that airspace

extending upward from 1,200 feet above the surface bounded on the north along V-2, on the east along V-254; on the south along lat. 45°30'00"N., to long. 107°40'00"W., on the west along long. 107°40'00"W., to V-2; excluding that airspace within Federal airways, the Billings, the Forsyth and the Miles City, MT, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on April 30, 1999.

Daniel A. Boyle,

*Assistant Manager, Air Traffic Division,
Northwest Mountain Region.*

[FR Doc. 99-12059 Filed 5-12-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 990427108-9108-01]

RIN 0694-AB93

Exports to Cuba

AGENCY: Bureau of Export
Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce, Bureau of Export Administration is amending the Export Administration Regulations to implement a part of the January 5, 1999, Presidential initiative to enhance the United States' support of the Cuban people to promote a transition to democracy. This final rule authorizes the issuance of licenses for exports of food and certain agricultural commodities sold to individuals and independent non-governmental entities in Cuba. This rule will increase the number of license applications submitted to the Department of Commerce for exports to Cuba.

DATES: This rule is effective May 10, 1999.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy, Bureau of Export Administration, Telephone: (202) 482-0092.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999, the President announced that the United States will initiate certain actions to enhance support of the Cuban people to promote transition to democracy. In doing this, the U.S. seeks to assist and support the Cuban people without strengthening the current Cuban government. The objective is to promote the development and evolution of an independent civil society to help promote a transition to

a free, independent, and prosperous nation.

These measures are consistent with the Cuban Democracy Act of 1992, as amended, and the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996. The President is authorized to furnish assistance and provide other support for individuals and independent non-governmental organizations in Cuba.

Under the President's initiative, the Department of Commerce, Bureau of Export Administration (BXA) may approve, on a case-by-case basis, applications for exports of food (both solids and liquids) and certain agricultural commodities for sale to independent non-governmental entities (i.e., individuals and other entities that are not controlled, owned or operated by the Cuban government) in Cuba. For purposes of the new initiative, "independent non-governmental entities" is defined to include religious groups, private farmers, and private sector undertakings such as family restaurants. When submitting applications, applicants must demonstrate on the license application that the prospective end-user or class of end-users is independent from the Cuban government. Include such information in Block 24, Additional Information, on Form BXA-748P. The U.S. Government will review this information within 30 days. Agricultural commodities that may be authorized for sale under the new policy include, but are not limited to, insecticides, pesticides, herbicides, seeds and fertilizer. Agricultural equipment is not eligible for consideration under this policy.

Consistent with existing practice, the Department of Treasury, Office of Foreign Assets Control (OFAC) will generally authorize financial transactions (e.g., purchase price, shipping and handling charges) related to export sales of food or agricultural commodities specifically authorized by BXA. Therefore, an export sale of food authorized by Commerce will not require additional specific authorization from OFAC for shipping, obtaining payments or other financial transactions. Licenses may be authorized to pay for local warehousing and transportation services provided that charges and fees levied for delivery are customary and reasonable.

Exporters are advised to indicate on their license applications for the export of food and agricultural commodities whether they plan to deliver such commodities to Cuba by vessel or aircraft. An export license must be obtained from BXA for vessels to transport licensed commodities to Cuba.

Authorization for the vessel and for necessary ship stores may be requested at the time of application for the export of food or agricultural commodities for sale in Cuba under the new policy. However, note that authorization must be obtained from OFAC for the return of such vessels to the United States within 180 days of leaving Cuba. OFAC is publishing elsewhere in this issue of the **Federal Register** a separate regulation that allows the return of such vessels under a General License, provided that all items have been authorized via applicable Federal regulations. Aircraft flying to Cuba to deliver commodities licensed under this policy must be eligible for License Exception AVS (see § 740.15 of the EAR) or must be specifically licensed by BXA.

The President also called for expansion of people-to-people contacts between the United States and Cuba by facilitating travel of persons from the United States to Cuba and from Cuba to the United States, and streamlining licensing procedures for authorizing such travel. Pursuant to the President's initiative, BXA will also review, on a case-by-case basis, license applications requesting authorization to use private aircraft for temporary sojourn for travel to Cuba involving educational, cultural, journalistic, religious, or athletic exchanges and other people-to-people contacts. This policy furthers the President's March 1998 initiative, under which BXA is already reviewing, with a presumption of approval, applications for temporary exports of private aircraft involving humanitarian aid and assistance programs. This policy is applicable to temporary sojourn flights from the U.S. to Cuba of aircraft not eligible for BXA License Exception AVS (see § 740.15 of the EAR), and that require specific authorization from BXA. Note that aircraft may fly on regularly scheduled charter flights to Cuba generally under License Exception AVS. OFAC must authorize travel by U.S. persons associated with such flights. Any commodities included on the aircraft that do not qualify for License Exception BAG (see § 740.14 of the EAR) or License Exception TMP (see § 740.9 of the EAR) require a specific Commerce license authorizing the export of such items to Cuba.

As another part of this initiative, other agencies will authorize direct charter flights to Cuba departing from U.S. cities other than Miami by separate notice. The United States is also seeking to reestablish direct mail between the United States and Cuba. This measure requires the agreement of the Cuban

government. BXA reminds exporters that the mailing of gift packages through U.S. mail still constitutes an export and must meet the content, frequency and dollar value requirements of §§ 746.2(a)(1)(viii) and 740.12 of the EAR, or be specifically licensed by BXA.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 13, 1998 (63 FR 44121, August 17, 1998).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information previously approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. In addition, miscellaneous and recordkeeping activities account for 12 minutes per submission. As a result of this rule, the paper work burden on the public is increased by 22 hours on an annual basis.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 746

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, 15 CFR chapter VII, subchapter C, is amended as follows:

PART 746—[AMENDED]

1. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c, 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 13, 1998).

2. Section 746.2 is amended by adding a new paragraph (b)(4)(iii) to read as follows:

§ 746.2 Cuba.

* * * * *

(b) * * *

(4) * * *

(iii) Exports of food (both solids and liquids) and agricultural commodities may be approved, on case-by-case basis, for use by independent non-government entities in Cuba. Such entities may not be controlled, owned or operated by the Cuban government. Applicants must demonstrate on the license application in Block 24, Additional Information, that the prospective class or classes of end-users are independent from the Cuban government.

(A) Agricultural commodities that will be considered for approval include, but are not limited to, insecticides, herbicides, pesticides, seeds and fertilizer. Agricultural equipment is not eligible under this paragraph (b)(4)(iii) for sale to Cuba.

(B) For purposes of this paragraph (b), independent non-government entities include, but are not limited to, religious groups, private farmers, and private sector undertakings such as family restaurants.

* * * * *

Dated: May 10, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99-12132 Filed 5-10-99; 3:39 pm]

BILLING CODE 3510-33-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations: Sales of Food and Agricultural Inputs; Remittances; Educational, Religious, and Other Activities; Travel-Related Transactions; U.S. Intellectual Property

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: Pursuant to the President's announcement of January 5, 1999, the Treasury Department is amending the Cuban Assets Control Regulations to modify certain provisions with respect to remittances and travel-related transactions and to make other clarifying and conforming amendments to the regulations. The regulations also implement a statutory provision excluding from an existing general license transactions involving certain intellectual property used in connection with a business or assets that were confiscated.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT:

Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622-2490); Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480); Charles L. Bishop, OFAC-Miami Sanctions Coordinator (tel.: 305/810-5140); or William B. Hoffman, Chief Counsel (tel.: 202/622-2410); Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

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Page) = <http://www.fedworld.gov>; FTP = <ftp.fedworld.gov> (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: <http://www.treas.gov/ofac>, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On January 5, 1999, President Clinton announced that the United States is taking additional steps to expand the flow of humanitarian assistance to Cuba and strengthen independent civil society in that country. Among the initiatives the President announced were an expansion of remittances to support Cuban families and organizations independent of the Cuban government; expansion of people-to-people contact through two-way exchanges among academics, athletes, scientists, and others and streamlining the approval process for their visits; and the sale of food and agricultural commodities to independent nongovernmental entities.

The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") is implementing these steps through amendments to the Cuban Assets Control Regulations, 31 CFR Part 515 (the "CACR"), and reorganizing the CACR to place related provisions together. In addition, OFAC is implementing section 211 of Division A, Title II, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277 [H.R. 4328]), excluding from the scope of the general license contained in § 515.527 any transaction or payment with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated, unless the original owner of the mark, trade name, or commercial name or the bona fide successor-in-interest has expressly consented.

Remittances

In implementation of the President's policy statement, these amendments include a new general license allowing any person subject to U.S. jurisdiction who is 18 years of age or older to make remittances of up to \$300 in any consecutive 3-month period to the household of any individual in Cuba or the authorized trade territory (defined in § 515.322 of the CACR to mean all

countries not subject to economic sanctions administered by OFAC pursuant to chapter V, 31 CFR) who is not a senior government or senior communist party official of Cuba. Persons subject to U.S. jurisdiction may also be specifically licensed to send remittances to organizations independent of the Cuban government. Descriptions of specific amendments concerning remittances follow.

Old § 515.521 previously contained a general license authorizing remittances, including those from blocked accounts in the name of the payee or members of his or her household, not to exceed \$100 per calendar month to Cuban nationals in the authorized trade territory. Old § 515.556 stated that remittances from blocked accounts sent to Cuban nationals located in the authorized trade territory pursuant to § 515.521 could be increased on a case-by-case basis upon a showing that such increase was reasonable and necessary. These sections have been largely superseded by the new policy contained in new § 515.570 on remittances to Cuban nationals. The previous authorization for limited remittances from blocked accounts in § 515.521, and the reference to it in § 515.566, however, are now incorporated in § 515.570(a)(2), (b)(3) and (d)(3), respectively.

The general license contained in old § 515.563 permitting certain remittances to close relatives in Cuba is also incorporated in new § 515.570. In addition to the family remittance and the two existing \$500 emigration remittances, a new individual-to-household remittance, not to exceed \$300 per quarter, is now authorized by general license to any household of a Cuban national in Cuba or the authorized trade territory whose household does not include a senior Cuban government or communist party official. A remitter may not send both a family remittance and an individual-to-household remittance to the same household within the same 3-month period. New § 515.570 also provides for specific licenses authorizing remittances to independent nongovernmental entities in Cuba.

Travel-Related Transactions

Travel-related transactions are now generally authorized in connection with specified news support, professional research, and athletic activities, and are authorized in connection with broad classes of educational and religious activities in Cuba conducted under the auspices of U.S. academic institutions or U.S. religious organizations that receive long-term specific licenses. In addition, specific licenses may be

issued for travel-related transactions in connection with cultural activities, humanitarian projects, and certain trade transactions found consistent with relevant export licensing policies. Authorization of travel-related transactions related to exportations, however, does not extend to the authorization of the exportation itself. Descriptions of specific amendments concerning travel-related transactions follow.

Section 515.420 is added to set forth OFAC's interpretation of fully-hosted travel involving Cuba, previously contained in old § 515.560(g).

Old § 515.518 contained a general license permitting debits to blocked accounts held in the name of Cuban nationals for their living, traveling, and similar personal expenses in the United States, not to exceed \$250 per calendar month. This provision has now been consolidated with old § 515.564 (authorizing the same transactions on behalf of Cuban nationals in the United States from non-blocked sources) in new § 515.571.

Section 515.533, authorizing transactions incident to exportations of goods directly from the United States to Cuba that are authorized by the Department of Commerce, is amended to add a statement that specific licenses may be issued authorizing travel-related transactions for purposes related to the marketing, sales negotiation, accompanied delivery, or servicing of exports. Exportations themselves must be specifically licensed by the Department of Commerce. Section 511.533 is also amended to state that financing for exportations to Cuba of food and agricultural commodities authorized by the Department of Commerce is not authorized.

The authorization in old § 515.540 for the importation of Cuban-origin goods (other than alcohol and tobacco) contained in personal baggage carried by foreign nationals entering the United States has been moved to new § 515.569.

The authorization in § 515.545 for transactions directly incident to the importation or exportation of information and informational materials is amended to note that specific licenses may be issued authorizing travel-related transactions for purposes related to such activities.

Section 515.559, governing licensing policy with respect to transactions by U.S.-owned or controlled foreign firms with Cuba, is amended to add a statement that specific licenses may be issued authorizing travel-related transactions for purposes related to marketing, sales negotiation, accompanied delivery, or servicing of

exports found consistent with relevant OFAC export licensing policy; for example, exports of medicine and medical supplies.

Old § 515.560 authorized by general or specific license travel-related transactions to and within Cuba incident to specified activities set forth in that section. New § 515.560 continues to set forth the types of transactions that may be authorized incident to travel to Cuba, but the underlying activities for which such transactions may be authorized are now described in separate, self-contained sections, referenced in paragraph (a) of § 515.560. Paragraph (b) of § 515.560 is amended to cite OFAC's general licensing authority referred to in § 515.801 to license travel-related transactions for activities not specifically covered in part 515. Paragraph (c) of § 515.560 continues to list the travel-related transactions that may be authorized for generally and specifically licensed travelers to Cuba. Paragraph (c)(2) of § 515.560 increases the per diem for expenses in Cuba from \$100 to the amount authorized for civilian employees of the United States Government in Havana, Cuba, currently set at \$183. Changes in the per diem rate are published as required in the monthly State Department publication "Maximum Travel Per Diem Allowances for Foreign Areas," available from the Government Printing Office or on the Internet at <http://www.state.gov/www/perdiems/index.html>. New § 515.560 also incorporates old § 515.569, governing currency carried to Cuba by authorized travelers.

Section 515.561, previously reserved, now contains the general license authorizing travel-related transactions for the purpose of visiting close relatives in Cuba, previously contained in old § 515.560(a)(1)(iii). This general license, available once in any 12-month period, is only available in cases involving "humanitarian need." Any additional visits within a 12-month period require specific licensing under § 515.561(b), based on "humanitarian need."

Old § 515.562, authorizing U.S.-owned or controlled foreign firms to bunker vessels or fuel aircraft owned or controlled by, or chartered to, Cuba or nationals thereof, is moved to § 515.558. New § 515.562 now contains the general license authorizing travel-related and other transactions directly incident to official government travel to, from, and within Cuba, previously contained in § 515.560(a)(1)(i).

New § 515.563 now contains the general license for travel-related and other transactions directly incident to journalism, previously contained in old § 515.560(a)(1)(ii) and now expanded to

include travel-related transactions on the part of persons regularly employed as supporting broadcast or technical personnel. New § 515.563 also incorporates the specific licensing criteria for free-lance journalism previously set forth as an interpretive provision in old § 515.417 and now expanded to allow for specific licenses authorizing transactions for multiple trips to Cuba in certain cases.

Old § 515.564, authorizing transactions incident to travel to, from, and within the United States by certain Cuban nationals, is incorporated in new § 515.571. New § 515.564 consolidates old §§ 515.416, 515.419(a)(1), and 515.560(b), setting forth a general license for travel-related and other transactions directly incident to professional research and attendance at professional meetings in Cuba hosted by international organizations; these activities were previously authorized only by specific license.

Old § 515.565, authorizing transactions for public exhibitions and performances by specific license, is incorporated in new § 515.567. New § 515.565 consolidates old §§ 515.419, 515.560(b), and 515.573 to authorize travel-related and other transactions directly incident to a wide range of educational activities, including those undertaken by secondary school students, where the traveler carries a letter from his or her academic institution located in the United States confirming that he or she is affiliated with that institution. Use of this authorization requires that the accredited U.S. academic institution under whose auspices the educational activities are undertaken first obtain a specific license from OFAC authorizing the institution and its students and employees to engage in travel-related and other transactions directly incident to the generally-licensed educational activities set forth in § 515.565(a)(2)(i) to (a)(2)(vii). Such activities include teaching at a Cuban academic institution by persons employed in a teaching capacity in the United States, as well as sponsoring Cuban scholars to teach or engage in other scholarly activity in the United States, including the payment of a stipend or salary to the sponsored scholars. In addition, specific licenses pursuant to § 515.565(b) may be issued authorizing transactions incident to certain educational activities not covered by a specific license issued pursuant to § 515.565(a) to a U.S. academic institution or incident to certain educational exchanges not involving academic study pursuant to a degree program.

Old § 515.566, previously setting forth the criteria pursuant to which persons may be authorized to engage in transactions involving Cuba as travel or carrier service providers or family remittance forwarders, is moved to new § 515.572. New § 515.566(a) authorizes travel-related and other transactions directly incident to religious activities in Cuba, where the traveler carries a letter from his or her religious organization located in the United States confirming that he or she is affiliated with that organization and is traveling to Cuba to undertake religious activities under the organization's auspices. Use of this authorization requires that the U.S. religious organization itself obtain a specific license from OFAC authorizing the religious organization and affiliated individuals and groups to engage in travel-related and other transactions that are directly incident to religious activities in Cuba under the auspices of the licensed religious organization. Pursuant to § 515.566(b), specific licenses may also be issued for other religious activities in Cuba.

Old § 515.567, setting forth specific licensing criteria for unblocking certain corporate assets, is now contained in § 515.521. New § 515.567(a) sets forth a general license authorizing travel-related and other transactions directly incident to certain amateur and semi-professional athletic competitions by athletes or teams. Paragraph (b) of § 515.567 incorporates old § 515.565, setting forth the specific licensing criteria for travel-related and other transactions directly incident to participation in a public performance, clinic, workshop, athletic or other competition, or exhibition in Cuba, or for transactions on behalf of a Cuban national in the United States for the purpose of participation in such activities. Specific licenses authorizing transactions for multiple trips to Cuba for these purposes may also be issued.

Old § 515.568, setting forth specific licensing criteria for unblocking certain decedent estate assets, is moved to § 515.522.

Old § 515.569, governing the carriage of currency by travelers to Cuba, has been incorporated into new § 515.560. New § 515.569 now contains old § 515.540, generally authorizing foreign persons to import Cuban-origin goods (except for tobacco and alcohol) as accompanied baggage when entering the United States.

Old § 515.572, setting forth specific licensing criteria for the operation of news bureaus in Cuba, is moved to new § 515.573.

Section 515.574, setting forth specific licensing criteria for authorizing transactions in support of the Cuban people, is amended to add a statement that specific licenses may be issued authorizing travel-related transactions for such activities.

Section 515.575 is added to set forth specific licensing criteria for authorizing travel-related and other transactions for certain humanitarian projects designed to directly benefit the Cuban people, including medical and health-related, environmental, small-scale enterprise, and agricultural and rural development projects. Specific licenses authorizing transactions for multiple trips to Cuba for these purposes may also be issued.

Section 515.576 is added to set forth specific licensing criteria for authorizing travel-related and other transactions for activities of private foundations or research or educational institutes with an established interest in international relations. Specific licenses authorizing transactions for multiple trips to Cuba for these purposes may also be issued.

Miscellaneous Provisions

Section 515.206 of the CACR is amended to conform the scope of exempt transactions to include the statutory exemption for the donation of food to nongovernmental organizations or individuals in Cuba contained in section 1705(b) of the Cuban Democracy Act (22 U.S.C. 6001–6010, 6004(b)).

Section 515.527 of the CACR is amended to conform the scope of authorized transactions pertaining to intellectual property rights to the statutory restriction contained in section 211 of Division A, Title II, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277 [H.R. 4328]), excluding from the scope of the general license contained in § 515.527 any transaction or payment with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated, unless the original owner of the mark, trade name, or commercial name or the bona fide successor-in-interest has expressly consented.

Old § 515.571, waiving under certain circumstances the prohibition contained in § 515.207 (prohibiting certain vessels that have engaged in trade with Cuba from entering U.S. ports), is moved to § 515.550 and amended to expand the waiver to cover vessels involved in any trade transactions authorized pursuant to § 515.533.

The following two charts provide easy reference to the regulatory changes that have been made: the first lists the new section designations, their subjects, and from what former sections they are derived; the second lists the former section designations and indicates where the content of the old sections now appears.

Derivation of New Sections

New Section	Subject	Source
§ 515.420	Fully-hosted travel	§ 515.560(g)
§ 515.521	Blocked corporate assets	§ 515.567
§ 515.522	Blocked estate assets	§ 515.568
§ 515.550	Vessel waiver	§ 515.571
§ 515.558	Cuban carriers	§ 515.562
§ 515.561	Family visits	§ 515.560(a)
§ 515.562	Official travel	§ 515.560(a)
§ 515.563	Journalism	§§ 515.417, 515.560(a)
§ 515.564	Professional research	§§ 515.416, 515.419(a)(1), 515.560(b), CDA
§ 515.565	Educational activities	§§ 515.419, 515.560(b), 515.573
§ 515.566	Religious activities	§ 515.560(b)
§ 515.567	Athletic/cultural activities	§ 515.565
§ 515.568	Reserved	
§ 515.569	Foreign persons' baggage	§ 515.540
§ 515.570	Remittances	§§ 515.521, 515.556, 515.563
§ 515.571	Cubans in United States	§§ 515.518, 515.564
§ 515.572	Travel and carrier service	§ 515.566
§ 515.573	News organizations	§ 515.572
§ 515.575	Humanitarian projects	§ 515.560(b); new
§ 515.576	Foundation projects	§ 515.416(a)(1), (ii); new

Distribution of Former Sections

Former Section	Subject	New Location
§ 515.416	Professional research	§ 515.564
§ 515.417	Free-lance journalism	§ 515.563(b)

Former Section	Subject	New Location
§ 515.419	Educational activities	§ 515.565
§ 515.518	Cubans in United States	§ 515.571(b)
§ 515.521	Remittances to Cubans	§ 515.570
§ 515.540	Foreign persons' baggage	§ 515.569
§ 515.556	Remittances to Cubans	§ 515.570
§ 515.558	Sole proprietors	§ 515.546
§ 515.562	Cuban carriers	§ 515.558
§ 515.563	Family remittances	§ 515.570
§ 515.564	Cubans in United States	§ 515.571(a)
§ 515.565	Public exhibitions	§ 515.567(b)
§ 515.566	Travel and carrier service	§ 515.572
§ 515.567	Blocked corporate assets	§ 515.521
§ 515.568	Blocked estate assets	§ 515.522
§ 515.569	Currency	§ 515.560
§ 515.571	Vessel waiver	§ 515.550
§ 515.572	News organizations	§ 515.573
§ 515.573	Educational activities	§ 515.565

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553)(the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Regulations are being issued without prior notice and public comment procedure pursuant to the APA. The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the

collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency, Estates, Exports, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Intellectual property, Penalties, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010, 6021–6091; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 105–277; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–48 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart D—Prohibitions

2. Section 515.206 is amended as follows:

A. The section heading is revised to read as set forth below.

B. Paragraphs (a) through (d) are redesignated as paragraphs (a)(1) through (a)(4).

C. A heading for paragraph (a) is added as set forth below.

D. Redesignated paragraph (a)(3) is amended by removing the words “section 779 of the Export Administration Regulations, 15 CFR parts 768–799,” and adding in their place the words “the Export Administration Regulations, 15 CFR parts 730–774,”.

E. Redesignated paragraph (a)(4) is amended by removing the words “§ 515.560 or by specific license.” and adding in their place “§ 515.545.”.

F. New paragraph (b) is added to read as follows:

§ 515.206 Exempt transactions.

(a) *Information and informational materials.* (1) * * *

* * * * *

(b) *Donation of food.* The prohibitions contained in this part do not apply to transactions incident to the donation of

food to nongovernmental organizations or individuals in Cuba.

Subpart C—General Definitions

3. Section 515.302 is amended as follows:

A. Paragraph (b) is redesignated as new paragraph (c).

B. New paragraph (b) is added to read as follows:

§ 515.302 National.

* * * * *

(b) Persons who travel in Cuba do not become nationals of Cuba solely because of such travel.

* * * * *

Subpart D—Interpretations

§ 515.407 [Amended]

4. Section 515.407 is amended by revising “§ 515.568” to read “§ 515.522”.

§ 515.415 [Amended]

5. Section 515.415 is amended as follows:

A. Paragraph (b) is amended by revising “§ 515.564” to read “§ 515.571”.

B. Paragraph (c) is amended by removing the words “within the general license of § 515.560” and adding in their place “as set forth in § 515.560(c)”.

§ 515.416 [Removed and reserved]

6. Section 515.416 is removed and reserved.

§ 515.417 [Removed and reserved]

7. Section 515.417 is removed and reserved.

§ 515.418 [Amended]

8. Paragraph (b) of § 515.418 is amended by revising “§ 515.560(b)”, wherever it appears, to read “§ 515.545”.

§ 515.419 [Removed and reserved]

9. Section 515.419 is removed and reserved.

10. Section 515.420 is added to Subpart D to read as follows:

§ 515.420 Fully-hosted travel to Cuba.

(a) A person subject to the jurisdiction of the United States who is not authorized to engage in travel-related transactions in which Cuba has an interest will not be considered to violate the prohibitions of this part when a person not subject to the jurisdiction of the United States covers the cost of all transactions related to the travel of the person subject to the jurisdiction of the United States (the “fully-hosted” traveler), provided that:

(1) No person subject to the jurisdiction of the United States has

made any payments or transferred any property or provided any service to Cuba or a Cuban national in connection with such fully-hosted travel or has prepaid or reimbursed any person for travel expenses, except as authorized in paragraph (b) of this section; and

(2) The travel is not aboard a direct flight between the United States and Cuba authorized pursuant to § 515.572.

(b) Travel will be considered fully hosted notwithstanding a payment by a person subject to the jurisdiction of the United States for transportation to and from Cuba, provided that the carrier furnishing the transportation is not a Cuban national. Persons authorized as travel service providers pursuant to § 515.572 may book passage on behalf of fully-hosted travelers through to Cuba, provided that such travel is not on a direct flight from the United States and that the carrier furnishing the transportation is not a Cuban national.

(c) Unless otherwise authorized pursuant to this part, any person subject to the jurisdiction of the United States who has traveled to Cuba shall be presumed to have engaged in travel-related transactions prohibited by § 515.201. This presumption may be rebutted by a statement signed by the traveler providing specific supporting documentation showing that no transactions were engaged in by the traveler or on the traveler's behalf by other persons subject to U.S.

jurisdiction or showing that the traveler was fully hosted by a third party not subject to the jurisdiction of the United States and that payments made on the traveler's behalf were not in exchange for services provided to Cuba or any national thereof. The statement should address the circumstances of the travel and explain how it was possible for the traveler to avoid entering into travel-related transactions such as payments for meals, lodging, transportation, bunkering of vessels, visas, entry or exit fees, and gratuities. If applicable, the statement should state what party hosted the travel and why. The statement must provide a day-to-day account of financial transactions waived or entered into on behalf of the traveler by the host, including but not limited to visa fees, room and board, local or international transportation costs, and Cuban airport departure taxes. In the case of pleasure craft calling at Cuban marinas, the statement must also address related refueling costs, mooring fees, club membership fees, provisions, cruising permits, local land transportation, and departure fees. Travelers fully hosted by a person or persons not subject to the jurisdiction of the United States must also provide an

original signed statement from their sponsor or host, specific to that traveler, confirming that the travel was fully hosted and the reasons for the travel.

Note to paragraph (c): Travelers should be aware that fully-hosted travelers are not travelers whose travel-related transactions are licensed pursuant to this part and therefore such fully-hosted travelers may not engage in the travel-related transactions set forth in § 515.560(c), including the purchase and importation of up to \$100 of Cuban merchandise for personal use. All documentation described in paragraph (c) of this section is subject to the recordkeeping requirements, including the record retention period, in § 501.601 of this chapter.

(d) Persons planning to travel to Cuba may access the Office of Foreign Assets Control's information resources over the Internet at <http://www.treas.gov/ofac>, through the office's fax-on-demand service at 202/622-0077, or by calling the office's Compliance Programs Division at 202/622-2490, prior to their departure to familiarize themselves with the requirements for fully-hosted travel. Other inquiries concerning travel-related transactions should be addressed to the Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 515.518 [Removed and reserved]

11. Section 515.518 is removed and reserved.

§§ 515.521, 515.563, 515.564, 515.565, 515.569, 515.573 [Removed]

12. Sections 515.521, 515.563, 515.564, 515.565, 515.569, and 515.573 are removed.

13. The sections listed in the first column below are redesignated as shown in the second column:

Old Section	New Section
§ 515.540	§ 515.569
§ 515.558	§ 515.546
§ 515.562	§ 515.558
§ 515.566	§ 515.572
§ 515.567	§ 515.521
§ 515.568	§ 515.522
§ 515.571	§ 515.550
§ 515.572	§ 515.573

§ 515.523 [Amended]

14. Paragraph (b)(3) of § 515.523 is amended by revising “§ 515.568” to read “§ 515.522”.

§ 515.525 [Amended]

15. Paragraph (b) of § 515.525 is amended by revising “§ 515.523, § 515.568” to read “§ 515.522, § 515.523”.

16. Section 515.527 is amended by designating the existing text as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 515.527 Certain transactions with respect to United States intellectual property.

(a)(1) * * *

(2) No transaction or payment is authorized or approved pursuant to paragraph (a)(1) of this section with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated, as that term is defined in § 515.336, unless the original owner of the mark, trade name, or commercial name, or the bona fide successor-in-interest has expressly consented.

* * * * *

17. In § 515.533, the section heading is revised; the introductory text of paragraph (a) and paragraphs (a)(1) and (d) are revised; and paragraphs (e) and (f) and a note to the section are added to read as follows:

§ 515.533 Transactions incident to exportations from the United States to Cuba.

(a) All transactions ordinarily incident to the exportation of goods, wares, and merchandise from the United States to any person within Cuba are hereby authorized, provided the following terms and conditions are complied with:

(1) The exportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (see the Export Administration Regulations, 15 CFR 730–774); and

* * * * *

(d) This section does not authorize any exportation under License Exception GFT, 15 CFR 740.12, except gift parcels that contain only food, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, or certain radio equipment and batteries for such equipment, as specifically set forth in 15 CFR 740.12, and that

otherwise comply with the requirements of that section.

(e) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to the marketing, sales negotiation, accompanied delivery, or servicing of exports that appear consistent with the export licensing policy of the Department of Commerce.

(f) This section does not authorize trade financing with respect to the commercial sale of food or agricultural commodities.

Note to § 515.533: For the waiver of the prohibition contained in § 515.207 on certain vessel transactions for vessels transporting shipments of goods, wares, or merchandise between the United States and Cuba pursuant to this section, see § 515.550.

§ 515.540 [Removed and reserved]

18. Section 515.540 is removed and reserved.

19. Section 515.545 is amended as follows:

A. Paragraph (b) is amended by revising “§ 515.206(c)” to read “§ 515.206(a)(3)”.

B. Paragraph (c) is added to read as follows:

§ 515.545 Transactions related to information and informational materials.

* * * * *

(c) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) for purposes related to the exportation, importation, or transmission of information or informational materials as defined in § 515.332.

20. Newly redesignated § 515.550 is revised to read as follows:

§ 515.550 Certain vessel transactions authorized.

Unless a vessel has otherwise engaged in transactions that would prohibit entry pursuant to § 515.207, § 515.207 shall not apply to a vessel that is:

(a) Engaging in trade with Cuba authorized by licenses issued pursuant to § 515.533 or § 515.559; or

(b) Engaging in trade with Cuba that is exempt from the prohibitions of this part (see § 515.206).

§ 515.551 [Amended]

21. Paragraph (a)(3) of § 515.551 is amended by revising “§ 515.568” to read “§ 515.522”.

§ 515.556 [Removed and reserved]

22. Section 515.556 is removed and reserved.

23. Section 515.559 is amended by adding paragraph (b)(2) and a note to the section to read as follows:

§ 515.559 Transactions by U.S.-owned or controlled foreign firms with Cuba.

* * * * *

(b) * * *

(2) Travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to marketing, sales negotiation, accompanied delivery, or servicing of exports that are consistent with the licensing policy under this section.

* * * * *

Note to § 515.559: Transactions by U.S.-owned or controlled foreign firms in connection with the exportation of information or informational materials or the donation of food to nongovernmental entities or individuals in Cuba are exempt from the prohibitions of this part. See § 515.206. For the waiver of the prohibition contained in § 515.207 on certain vessel transactions for vessels transporting shipments of goods, wares, or merchandise pursuant to this section, see § 515.550.

24. Section 515.560 is revised to read as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

(a) The travel-related transactions listed in paragraph (c) of this section may be authorized either by a general license or on a case-by-case basis by a specific license for travel related to the following activities (see the referenced sections for general and specific licensing criteria):

(1) Family visits (general and specific licenses) (see § 515.561);

(2) Official business of the U.S. government, foreign governments, and certain intergovernmental organizations (general license) (see § 515.562);

(3) Journalistic activity (general and specific licenses) (see § 515.563);

(4) Professional research (general and specific licenses) (see § 515.564);

(5) Educational activities (specific licenses) (see § 515.565);

(6) Religious activities (specific licenses) (see § 515.566);

(7) Public performances, clinics, workshops, athletic and other competitions, and exhibitions (general and specific licenses) (see § 515.567);

(8) Support for the Cuban people (specific licenses) (see § 515.574);

(9) Humanitarian projects (specific licenses) (see § 515.575);

(10) Activities of private foundations or research or educational institutes (specific licenses) (see § 515.576);

(11) Exportation, importation, or transmission of information or informational materials (specific licenses) (see § 515.545); and

(12) Certain export transactions that may be considered for authorization under existing Department of Commerce

regulations and guidelines with respect to Cuba or engaged in by U.S.-owned or controlled foreign firms (specific licenses) (see §§ 515.533 and 515.559).

(b) Travel-related transactions in connection with activities other than those referenced in paragraph (a) of this section may be authorized on a case-by-case basis by a specific license issued pursuant to § 515.801.

(c) Persons generally or specifically licensed under this part to engage in transactions in connection with travel to, from, and within Cuba may engage in the following transactions:

(1) *Transportation to and from Cuba.* All transportation-related transactions ordinarily incident to travel to and from (not within) Cuba, provided no more than \$500 may be remitted to Cuba directly or indirectly in any consecutive 12-month period for fees imposed by the Government of Cuba in conjunction with such travel unless otherwise authorized.

(2) *Living expenses in Cuba.* All transactions ordinarily incident to travel anywhere within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, provided that, unless otherwise authorized, the total for such expenses does not exceed the "maximum per diem rate" for Havana, Cuba in effect during the period that the travel takes place. The per diem rate is published in the State Department's "Maximum Travel Per Diem Allowances for Foreign Areas," a supplement to section 925, Department of State Standardized Regulations (Government Civilians, Foreign Areas), available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or on the Internet at <http://www.state.gov/www/perdiems/index.html>.

(3) *Purchase in Cuba and importation into the United States of merchandise.* The purchase in Cuba and importation as accompanied baggage into the United States of merchandise with a foreign market value not to exceed \$100 per person, provided the merchandise is imported for personal use only. Such merchandise may not be resold. This authorization may be used only once every six consecutive months. As provided in § 515.206(a), the purchase and importation of information or informational materials are exempt from all restrictions contained in this part.

(4) *Carrying remittances to Cuba.* The carrying to Cuba of any remittances that the licensed traveler is authorized to remit pursuant to § 515.570, provided that no more than \$300 of remittances authorized by § 515.570(a) or (b) is

carried in any one trip, unless otherwise authorized. Those licensed travelers carrying either of the emigration remittances authorized pursuant to § 515.570(c) must be able to produce the visa recipient's full name and date of birth and the number and date of issuance of the visa or other travel authorization issued. A licensed traveler to Cuba is only authorized to carry remittances that he or she is authorized to remit and may not carry remittances being made by other persons.

(5) *Processing certain financial instruments.* All transactions incident to the processing and payment of checks, drafts, travelers' checks, and similar instruments negotiated in Cuba by any person authorized pursuant to this part to engage in financial transactions in Cuba. For purposes of this section, the authorized transactions may be conducted using currency, which is defined as money, cash, drafts, notes, travelers' checks, negotiable instruments, or scrip having a specified or readily determinable face value or worth, but which does not include gold or other precious metals in any form.

Note to paragraph (c): The authorizations in paragraph (c) of this section do not apply to fully-hosted travelers because their travel-related transactions are not licensed or authorized pursuant to this part. See § 515.420.

(d) A Cuban national departing the United States may carry currency, as that term is defined in paragraph (c)(5) of this section, as follows:

(1) The amount of any currency brought into the United States by the Cuban national and registered with the U.S. Customs Service upon entry;

(2) Up to \$300 in funds received as remittances by the Cuban national during his or her stay in the United States; and

(3) Compensation earned by a Cuban national from a U.S. academic institution up to any amount that can be substantiated through payment receipts from such institution as authorized pursuant to § 515.565(a)(2)(v).

(e) The following transactions by persons generally or specifically licensed to engage in travel-related transactions to, from, and within Cuba are prohibited by § 515.201 unless specifically authorized:

(1) All transactions by persons subject to U.S. jurisdiction related to the utilization of charge cards, including but not limited to debit or credit cards, for expenditures in Cuba.

(2) All transactions related to the processing and payment by persons subject to U.S. jurisdiction, such as charge card issuers or intermediary banks, of charge card instruments (e.g.,

vouchers, drafts, or sales receipts) for expenditures in Cuba. The issuer of a charge card, or a foreign charge card firm owned or controlled by persons subject to U.S. jurisdiction, is not authorized to deal with a Cuban enterprise, a Cuban national, or a third-country person, such as a franchisee, in connection with the extension of charge card services to any person in Cuba.

(f) Persons traveling to Cuba fully hosted as described in § 515.420 may not carry currency to pay for living expenses or the purchase of goods in Cuba except as specifically licensed pursuant to or exempted from the application of this part.

(g) Nothing in this section authorizes transactions in connection with tourist travel to Cuba, nor does it authorize transactions in relation to any business travel, including making or agreeing to make any investment in Cuba, establishing or agreeing to establish any branch or agency in Cuba, or transferring or agreeing to transfer any property to Cuba, except transfers by or on behalf of individual or group travelers authorized pursuant to this part.

25. Section 515.561 is added to read as follows:

§ 515.561 Persons visiting family members in Cuba.

(a) *General license.* The travel-related transactions set forth in § 515.560(c) are authorized in connection with travel to Cuba by persons and persons traveling with them who share a common dwelling as a family with them who are traveling to visit close relatives in Cuba in circumstances that demonstrate humanitarian need, provided that the authorization contained in this paragraph may be used only once in any 12-month period. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Any additional transactions must be specifically licensed pursuant to paragraph (b) of this section.

(b) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) in connection with travel to Cuba by persons, and persons traveling with them who share a common dwelling as a family with them, who seek to travel to visit close relatives in Cuba more than once in any consecutive 12-month period in cases involving humanitarian need.

(c) For purposes of this section, the term *close relative* used with respect to any person means such person's spouse, child, grandchild, parent, grandparent,

great grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, mother-in-law, father-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, or spouse, widow, or widower of any of the foregoing.

26. New § 515.562 is added to read as follows:

§ 515.562 Officials of the U.S. government, foreign governments, and certain intergovernmental organizations traveling to, from, and within Cuba on official business.

The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to activities in their official capacities by persons who are officials of the United States Government, any foreign government, or any intergovernmental organization of which the United States is a member and who are traveling on the official business of their government or international organization are authorized.

27. New § 515.563 is added to read as follows:

§ 515.563 Journalistic activities in Cuba.

(a) *General license.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to journalistic activities in Cuba by persons regularly employed as journalists by a news reporting organization or by persons regularly employed as supporting broadcast or technical personnel are authorized.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. The exportation of equipment and other items to be used in journalistic activities may require separate licensing by the Department of Commerce.

(b) *Specific licenses.* (1) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to doing research in Cuba for a free-lance article upon submission of an adequate written application including the following documentation:

(i) A detailed itinerary and a detailed description of the proposed research; and

(ii) A resume or similar document showing a record of publications.

(2) To qualify for a specific license pursuant to this section, the itinerary for the proposed research in Cuba for a free-lance article must demonstrate that the research constitutes a full work schedule that could not be accomplished in a shorter period of time.

(3) Specific licenses may be issued pursuant to this section authorizing

transactions for multiple trips to Cuba over an extended period of time by applicants demonstrating a significant record of free-lance journalism.

28. New § 515.564 is added to read as follows:

§ 515.564 Professional research and professional meetings in Cuba.

(a) *General license.* (1) The travel-related transactions set forth in § 515.560(c) and such additional transactions that are directly incident to professional research by full-time professionals who travel to Cuba to conduct professional research in their professional areas are authorized, provided that:

(i) The research is of a noncommercial, academic nature;

(ii) The research comprises a full work schedule in Cuba;

(iii) The research has a substantial likelihood of public dissemination; and

(iv) The research does not fall within the categories of activities described in paragraph (c), (d), or (e) of this section.

(2) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to travel to Cuba by full-time professionals to attend professional meetings or conferences in Cuba organized by an international professional organization, institution, or association that regularly sponsors meetings or conferences in other countries are authorized, provided that:

(i) The international professional organization, institution, or association is not headquartered in the United States unless that organization, institution, or association has been specifically licensed to sponsor the meeting in Cuba;

(ii) The purpose of the meeting or conference is not the promotion of tourism in Cuba or other commercial activities involving Cuba that are inconsistent with this part; and

(iii) The meeting or conference is not intended primarily for the purpose of fostering production of any biotechnological products.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of equipment and other items, including the transfer of technology or software to foreign persons ("deemed exportation") and items not eligible for Department of Commerce GFT or BAG License Exceptions, 15 CFR 740.12 and 740.14, may require separate authorization by the Department of Commerce.

(b) *Specific licensing.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly

incident to professional research and professional meetings that do not qualify for the general license in paragraph (a) of this section. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba over an extended period of time by applicants demonstrating a significant record of research. Specific licenses will not be issued for travel-related transactions for purposes of attendance at meetings or conferences in Cuba organized by the Cuban government where such meetings or conferences could be intended primarily for the purpose of fostering the production of any biotechnological products.

(c) Categories of activities that do not qualify for the general license in paragraph (a) of this section and for which the specific licenses described in paragraph (b) of this section will not be issued include recreational travel; tourist travel; travel in pursuit of a hobby; research for personal satisfaction only; and any travel for an authorized professional research purpose if the schedule of activities includes free time, travel, or recreation in excess of that consistent with a full work schedule of professional research or attendance at professional meetings or conferences.

(d) An entire group does not qualify for the general license in paragraph (a) of this section and will not be issued a specific license under paragraph (b) of this section merely because some members of the group could qualify individually for such licenses.

Example 1 to paragraph (d): A musicologist travels to Cuba to do research on Cuban music pursuant to the general license for professional researchers set forth in paragraph (a) of this section. Others who are simply interested in music but who do not research music as part of their careers may not engage in travel-related transactions with the musicologist in reliance on this general license. For example, an art historian who plays in the same band with the musicologist would not qualify as a professional researcher of Cuban music for purposes of this general license.

Example 2 to paragraph (d): A specific license issued pursuant to paragraph (b) of this section authorizing travel-related transactions by a fish biologist who travels to Cuba to engage in professional research does not authorize transactions by other persons who might travel with the fish biologist but whose principal purpose in travel is to engage in recreational or trophy fishing. The fact that such persons may engage in certain activities with or under the direction of the professional fish biologist, such as measuring or recording facts about their catch, does not bring these individuals' activities within the scope of professional research and similar activities.

(e) A person will not qualify as engaging in professional research

merely because that person is a professional who plans to travel to Cuba.

Example 1 to paragraph (e): A professor of history interested in traveling to Cuba for the principal purpose of learning or practicing Spanish or attending general purpose lectures devoted to Cuban culture and contemporary life does not qualify for the general license in paragraph (a) of this section or for a specific license issued pursuant to paragraph (b) of this section.

Example 2 to paragraph (e): A professional photographer who wishes to take photographs in Cuba that will become the basis for creating post cards, paintings, and other secondary products or that merely document the photographer's travel does not qualify for the general license in paragraph (a) of this section or for a specific license issued pursuant to paragraph (b) of this section.

29. New § 515.565 is added to read as follows:

§ 515.565 Educational activities.

(a) *Specific license for U.S. academic institutions—(1) Issuance; renewal.* A specific license may be issued to an accredited U.S. academic institution authorizing the institution and its students and employees to engage, under the auspices of the institution, in educational activities involving transactions in which Cuba or a Cuban national has an interest. The application for the specific license must establish that the U.S. academic institution is accredited by an appropriate national or regional educational accrediting association. The specific license may be renewed after a period of two years to authorize the accredited U.S. academic institution and its students and employees to continue to engage in the transactions authorized under the institution's license.

(2) *Scope of transactions authorized under U.S. academic institution's specific license; documentation.* Upon receipt of a specific license pursuant to paragraph (a)(1) of this section by the accredited U.S. academic institution, the institution and its students and employees are authorized to engage in the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to any of the categories of educational activities set forth in paragraphs (a)(2)(i) through (a)(2)(vii) of this section undertaken under the auspices of the specifically-licensed institution. Activities covered by this authorization are limited to the following:

(i) Participation in a structured educational program by an undergraduate or graduate student or undergraduate or graduate student group as part of a course offered at an accredited U.S. college or university. A

student planning to engage in such transactions in Cuba must carry a letter from the U.S. academic institution stating that the student is currently enrolled in an undergraduate or graduate degree program there and that the Cuba travel is part of a structured educational program of that institution and citing the number of the relevant U.S. academic institution's specific license.

(ii) Noncommercial academic research in Cuba specifically related to Cuba by a person working to qualify academically as a professional (for example, research toward a graduate degree). A student planning to engage in such transactions in Cuba must carry a letter from the student's accredited U.S. academic institution stating that the individual is currently enrolled in a graduate degree program and that the Cuba research will be accepted for credit toward that degree and citing the number of the relevant U.S. academic institution's specific license.

(iii) Participation in a formal course of study at a Cuban academic institution by an undergraduate or graduate student currently enrolled in a degree program at an accredited U.S. college or university, provided the formal course of study in Cuba will be accepted for credit toward the student's undergraduate or graduate degree at that U.S. college or university. A student planning to engage in such transactions in Cuba must carry with him or her a letter from the student's U.S. academic institution stating that the student is currently enrolled in an undergraduate or graduate degree program and that the Cuban study will be accepted for credit toward that degree and citing the number of the relevant U.S. academic institution's specific license.

(iv) Teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at an accredited U.S. college or university, provided the teaching activities are related to an academic program at the Cuban institution. An individual planning to teach at a Cuban academic institution must obtain and carry a written letter from the individual's U.S. academic institution, citing the number of that institution's specific license and stating that the individual is regularly employed there in a teaching capacity.

(v) Sponsorship, including the payment of a stipend or salary, of a Cuban scholar to teach or engage in other scholarly activity at a college or university in the United States (in addition to those transactions authorized by the general license contained in § 515.571). Such earnings may be remitted to Cuba as provided in

§ 515.570, or carried on the person of the Cuban scholar returning to Cuba as provided in § 515.560(d)(3).

(vi) Educational exchanges sponsored by Cuban or U.S. secondary schools involving secondary school students' participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution and led by a teacher or other secondary school official. This authorization includes participation by a reasonable number of adult chaperones to accompany the secondary school student(s) to Cuba. A secondary school group planning to engage in such transactions in Cuba must carry a letter from the secondary school sponsoring the trip, citing the number of the school's specific license and listing the names of all persons traveling with the group.

(vii) The organization of and preparation for transactions and activities described in paragraphs (a)(2)(i) through (a)(2)(vi) of this section by a full-time employee of a U.S. academic institution. An individual engaging in such transactions must carry a written letter from the individual's U.S. academic institution, citing the number of that institution's specific license and stating that the individual is regularly employed there.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of equipment and other items, including the transfer of technology or software to foreign persons ("deemed exportation"), and items not eligible for Department of Commerce GFT or BAG License Exceptions, 15 CFR 740.12 and 740.14, may require separate licensing from the Department of Commerce.

(b) *Specific license.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to:

(1) Educational activities described in paragraphs (a)(2)(i) through (a)(2)(iii) of this section not covered by a specific license issued pursuant to paragraph (a) of this section to an accredited U.S. academic institution; or

(2) Educational exchanges not involving academic study pursuant to a degree program when those exchanges take place under the auspices of an organization that sponsors and organizes such programs to promote people-to-people contact.

(c) Transactions related to activities that are primarily tourist-oriented, including self-directed educational activities that are intended only for personal enrichment, are not authorized by this section.

30. New § 515.566 is added to read as follows:

§ 515.566 Religious activities in Cuba.

(a) *Specific license for U.S. religious organizations—(1) Issuance; renewal.* A specific license may be issued to a religious organization located in the United States authorizing the organization and individuals and groups affiliated with the organization to engage, under the auspices of the organization, in religious activities involving transactions (including travel-related transactions) in which Cuba or a Cuban national has an interest. The application for the specific license must set forth examples of religious activities to be undertaken in Cuba. The religious organization's specific license may be renewed after a period of two years to authorize the organization and individuals and groups affiliated with the organization to continue to engage in the transactions authorized under the organization's license.

(2) *Scope of transactions authorized under U.S. religious organization's specific license; documentation.* Upon receipt by the religious organization located in the United States of a specific license pursuant to paragraph (a)(1) of this section, the organization and individuals or groups affiliated with the organization are authorized to engage in the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to religious activities in Cuba under the auspices of the organization. Travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time program of religious activities. Financial and material donations to Cuba or Cuban nationals are not authorized by this paragraph (a)(2). All individuals who engage in transactions in which Cuba or Cuban nationals have an interest (including travel-related transactions) pursuant to this paragraph (a)(2) must carry with them a letter from the specifically-licensed U.S. religious organization, citing the number of the organization's specific license and confirming that they are affiliated with the organization and are traveling to Cuba to engage in religious activities under the auspices of the organization.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of items to be used in Cuba may require separate licensing by the Department of Commerce.

(b) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related

transactions set forth in § 515.560(c) and other transactions that are directly incident to religious activities not covered by a specific license issued pursuant to paragraph (a) of this section to a U.S. religious organization. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips over an extended period of time to engage in a full-time program of religious activities in Cuba.

31. New § 515.567 is added to read as follows:

§ 515.567 Public performances, clinics, workshops, athletic and other competitions, and exhibitions.

(a) *General license.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to athletic competition by amateur or semi-professional athletes or amateur or semi-professional athletic teams traveling to participate in athletic competition held in Cuba are authorized, provided that:

(1) The athletic competition in Cuba is held under the auspices of the international sports federation for the relevant sport;

(2) The United States participants in the athletic competition are selected by the United States federation for the relevant sport; and

(3) The competition is open for attendance, and in relevant situations participation, by the Cuban public.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of items to be used in Cuba may require separate licensing by the Department of Commerce.

(b) *Specific licenses.* (1) Specific licenses, including for multiple trips to Cuba over an extended period of time, may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to participation in a public performance, clinic, workshop, athletic or other competition, or exhibition in Cuba by participants in such activities, provided that:

(i) The event is open for attendance, and in relevant situations participation, by the Cuban public;

(ii) All profits from the event after costs are donated to an independent nongovernmental organization in Cuba or a U.S.-based charity, with the objective, to the extent possible, of promoting people-to-people contacts or otherwise benefitting the Cuban people.

(2) In addition to those transactions authorized by § 515.571, specific licenses may be issued on a case-by-case basis authorizing transactions incident to participation in a public

exhibition, performance, clinic, workshop, or competition in the United States by a Cuban national who enters the United States for the purpose of such participation on a visa or other travel authorization issued by the Department of State.

(c) Specific licenses will not be issued pursuant to this section authorizing any:

(1) Payment to Cuba or any national thereof for appearance fees or other such payments in connection with or resulting from any public exhibition, performance, clinic, workshop, or competition in the United States or in Cuba; or

(2) Debit to a blocked account.

§ 515.568 [Reserved]

32. Section 515.568 is added and reserved.

33. Newly redesignated § 515.569 is revised to read as follows:

§ 515.569 Foreign passengers' baggage.

The importation of Cuban-origin goods, otherwise prohibited by this part, brought into the United States as baggage by any person arriving in the United States other than a citizen or resident of the United States is hereby authorized, notwithstanding the provisions of § 515.803, provided that such goods are not in commercial quantities and are not imported for resale. This authorization does not apply to the importation of Cuban-origin alcohol or tobacco products.

34. Section 515.570 is added to read as follows:

§ 515.570 Remittances to nationals of Cuba.

(a) *Family remittances authorized.* (1) Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to a national of Cuba resident in Cuba or in the authorized trade territory (including any member of his or her household) who is a close relative of the remitter or of the remitter's spouse, for the support of the close relative provided that:

(i) The remitter's total remittances pursuant to paragraphs (a) and (b) of this section to any one Cuban household, regardless of the number of close relatives comprising the household, do not exceed \$300 in any consecutive 3-month period; and

(ii) The remittances are not made from a blocked source, except that remittances to Cuban households located in the authorized trade territory may come from a blocked account in a banking institution within the United States held in the name of, or in which the beneficial interest is held by, the

payee or members of the payee's household.

(2) A person authorized to make remittances under this paragraph (a) and who is authorized to engage in travel-related transactions relating to Cuba pursuant to a general license contained in or specific license issued pursuant to this part may carry no more than \$300 in total remittances authorized in this paragraph (a), and only if the remittances will not exceed the maximum amount set forth in paragraph (a) of this section for any payee within the past 3 months. See § 515.560(c)(4).

(3) For purposes of this paragraph (a), the term *close relative* used with respect to any person means such person's spouse, child, grandchild, parent, grandparent, great grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, mother-in-law, father-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, or the spouse, widow, or widower of any of the foregoing.

Note to paragraph (a): The maximum amount set forth in paragraph (a) of this section does not apply to remittances to a Cuban individual who has been specifically licensed as an unblocked national pursuant to § 515.505(b), as remittances to unblocked persons do not require separate authorization.

(b) *Individual-to-household remittances authorized.* (1) Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to any Cuban household (including to any Cuban individual living alone) located in Cuba or in the authorized trade territory, provided that:

(i) The remitter's total remittances pursuant to paragraphs (a) and (b) of this section to any one Cuban household do not exceed \$300 in any consecutive 3-month period;

(ii) No member of the payee's household is a senior-level Cuban government official or senior-level Cuban communist party official; and

(iii) The remittances are not made from a blocked source, except that remittances to Cuban households located in the authorized trade territory may come from a blocked account in a banking institution within the United States held in the name of, or in which the beneficial interest is held by, the payee or members of the payee's household.

(2) A person authorized to make remittances under this paragraph (b) and who is authorized to engage in travel-related transactions relating to Cuba pursuant to a general license contained in or specific license issued pursuant to this part may carry no more

than \$300 in total remittances authorized in paragraphs (a) and (b) of this section, and only if the remittances will not exceed the maximum amount set forth in paragraph (a) or (b) of this section for any payee within the past 3 months. See § 515.560(c)(4).

Note to paragraph (b): The maximum amount set forth in paragraph (b) of this section does not apply to remittances to a Cuban individual who has been specifically licensed as an unblocked national pursuant to § 515.505(b), as remittances to unblocked persons do not require separate authorization.

(c) *Emigration-related remittances authorized.* Persons subject to the jurisdiction of the United States are authorized to remit the following amounts:

(1) Up to \$500 on a one-time basis to any Cuban national for the purpose of covering the payee's preliminary expenses associated with emigrating from Cuba to the United States. This remittance may be sent through a licensed remittance forwarding service before the payee has received a valid visa issued by the State Department or other approved U.S.-immigration document, but may not be carried to Cuba by the remitter during this period. A person who is authorized to engage in travel-related transactions relating to Cuba pursuant to a general license contained in or specific license issued pursuant to this part may carry remittances pursuant to this paragraph (c)(1), provided the traveler can demonstrate each visa recipient's full name and date of birth and the number and date of issuance of the U.S. visa or other travel authorization issued. See § 515.560(c)(4). Any amount remitted or carried to Cuba directly or indirectly in conjunction with the processing of a letter of invitation or similar document must be applied against the \$500 limit; and

(2) Up to an additional \$500 on a one-time basis to any Cuban national for the purpose of enabling the payee to emigrate from Cuba to the United States, including for the purchase of airline tickets and payment of exit or third-country visa fees or other travel-related fees. Such remittances may be transferred only after the Cuban individual has received a valid visa issued by the State Department or other approved U.S. immigration documentation. Persons remitting amounts pursuant to this paragraph (c)(2) must provide to the remittance forwarder the visa recipient's full name and date of birth and the number and date of issuance of the U.S. visa or other travel authorization issued. A person who is authorized to engage in travel-

related transactions relating to Cuba pursuant to a general license contained in or specific license issued pursuant to this part may carry remittances pursuant to this paragraph (c)(2), provided the traveler can demonstrate each visa recipient's full name and date of birth and the number and date of issuance of the U.S. visa or other travel authorization issued. See § 515.560(c)(4).

(d) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the following:

(1) Remittances by persons subject to U.S. jurisdiction to independent nongovernmental entities in Cuba;

(2) Repatriation of earnings by a Cuban scholar pursuant to § 515.565(a)(2)(v) in excess of the amount specified in paragraph (a) of this section;

(3) Remittances by persons subject to U.S. jurisdiction from blocked accounts to Cuban households in the authorized trade territory in excess of the amount specified in paragraphs (a) and (b) of this section; or

(4) Remittances by persons subject to U.S. jurisdiction to a person in Cuba, directly or indirectly, for transactions to facilitate non-immigrant travel by an individual in Cuba to the United States under circumstances where humanitarian need is demonstrated, including illness or medical emergency.

35. New § 515.571 is added to read as follows:

§ 515.571 Certain transactions incident to travel to, from, and within the United States by Cuban nationals.

(a) Except as provided in paragraph (c) of this section, the following transactions by or on behalf of a Cuban national who enters the United States from Cuba on a visa or other travel authorization issued by the State Department are authorized:

(1) All transactions ordinarily incident to travel between the United States and Cuba, including the importation into the United States of accompanied baggage for personal use;

(2) All transactions ordinarily incident to travel and maintenance within the United States, including the payment of living expenses and the acquisition of goods for personal consumption in the United States;

(3) All transactions on behalf of aircraft or vessels incident to non-scheduled flights or voyages between the United States and Cuba, provided that the carrier used has a carrier service provider license issued pursuant to § 515.572. This paragraph does not authorize the carriage of any

merchandise into the United States except accompanied baggage; and

(4) Normal banking transactions involving foreign currency drafts, travelers' checks, or other instruments negotiated incident to travel in the United States by any person under the authority of this section.

(b) Payments and transfers of credit in the United States from blocked accounts in domestic banking institutions held in the name of a Cuban national who enters the United States on a visa or other travel authorization issued by the State Department to or upon the order of such Cuban national are authorized provided that:

(1) Such payments and transfers of credit are made only for the living, traveling, and similar personal expenses in the United States of such Cuban national or his or her family;

(2) The total of all such payments and transfers of credit made under this section from the accounts of such Cuban national do not exceed \$250 in any one calendar month; and

(3) No payment or transfer is made from a blocked account in which a specially designated national has an interest.

(c) This section does not authorize any transfer of property to Cuba, or, except as otherwise authorized in paragraph (b) of this section, any debit to a blocked account.

36. Newly redesignated § 515.572 is amended as follows:

A. The section heading is revised as set forth below.

B. The word "family" is removed wherever it appears.

C. Paragraph (c)(4)(ii) is amended by removing the words "other than close relatives as defined in § 515.563(b)" and adding in their place the words "ineligible to receive them under § 515.570".

D. Paragraph (d)(2) is amended by removing "§ 515.601" and adding in its place "§ 501.601 of this chapter" and by removing "§ 515.602" and adding in its place "§ 501.602 of this chapter".

E. Paragraph (e)(2)(ii)(A) is amended by removing "§ 515.566(e)(3)" and adding in its place "paragraph (e)(3) of this section".

F. Paragraph (e)(2)(ii)(D) is amended by removing "§ 515.566(b)" and adding in its place "paragraph (b) of this section".

G. Paragraph (e)(3)(iii) introductory text is amended by removing "§ 515.566," and adding in its place "this section,".

H. Paragraph (c)(4)(i) is revised to read as follows:

§ 515.572 Authorization of transactions incident to the provision of travel services, carrier services, and remittance forwarding services.

* * * * *

(c) * * *

(4)(i) In the case of applications for authorization to serve as travel or carrier service providers, a report on the forms and other procedures used to establish that each customer is in full compliance with U.S. law implementing the Cuban embargo and either qualifies for one of the general licenses contained in this part authorizing travel-related transactions in connection with travel to Cuba, has received a specific license from the Office of Foreign Assets Control issued pursuant to this part, or is a fully-hosted traveler as described in § 515.420. In the case of a customer traveling pursuant to a general license or claiming to be traveling fully hosted, the applicant must demonstrate that it requires each customer to attest, in a signed statement, to his or her qualification for the particular general license or fully-hosted status claimed. The statement must provide facts supporting the customer's belief that he or she qualifies for the general license or fully-hosted status claimed. In the case of a customer traveling under a specific license, the applicant must demonstrate that it requires the customer to furnish it with a copy of the license. The copy of the signed statement or the specific license must be maintained on file with the applicant.

* * * * *

37. The introductory text of paragraph (a) of § 515.574 is revised to read as follows:

§ 515.574 Support for the Cuban people.

(a) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are intended to provide support for the Cuban people including, but not limited to, the following:

* * * * *

38. New § 515.575 is added to subpart E to read as follows:

§ 515.575 Humanitarian projects.

Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to certain humanitarian projects in or related to Cuba not otherwise covered by this part that are designed to directly benefit the Cuban people. Such projects may include, but are not limited to, medical and health-related projects, environmental projects, projects

involving non-formal educational training including adult literacy and vocational skills, community-based grass roots projects, projects suitable to the development of small-scale private enterprise, projects that are related to agricultural and rural development which promote independent activity, and projects involving the donation of goods to meet basic human needs as provided in 15 CFR 740.12(b) of the Export Administration Regulations, 15 CFR parts 730-774. Specific licenses may be issued authorizing transactions for multiple visits for the same project over an extended period of time by applicants demonstrating a significant record of overseas humanitarian projects.

39. New § 515.576 is added to subpart E to read as follows:

§ 515.576 Activities of private foundations or research or educational institutes.

Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to activities by private foundations or research or educational institutes that have an established interest in international relations to collect information related to Cuba for noncommercial purposes, not otherwise covered by the general license for professional research contained in § 515.564 or more properly issued under § 515.575, relating to humanitarian projects. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba for the same project over an extended period of time.

Dated: April 30, 1999.
R. Richard Newcomb,
Director, Office of Foreign Assets Control.
Approved: May 5, 1999.
Elisabeth A. Bresee,
Assistant Secretary (Enforcement),
Department of the Treasury.
[FR Doc. 99-12083 Filed 5-10-99; 3:39 pm]
BILLING CODE 4810-25-F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS JUNEAU (LPD 10) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 16, 1999.
FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, Telephone number: (202) 685-5040.
SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JUNEAU (LPD) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special functions as a naval ship: Annex I, section 2(a)(i), pertaining to the height

of the forward masthead light; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; and, Annex I, section 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:
Authority: 33 U.S.C. 1605.
2. Table One of § 706.2 is amended by adding, in numerical order, the following entry for the USS JUNEAU (LPD 10):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.
* * * * *

Vessel						Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
*	*	*	*	*	*	*	*
USS JUNEAU	.....	LPD 10	.....				4.27
*	*	*	*	*	*	*	*

3. Table Four, Paragraph 19 of § 706.2 is amended by adding, in numerical

order, the following entry for the USS JUNEAU (LPD 10):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel				Number		Distance in meters of sidelights above maximum allowed height.
*	*	*	*	*	*	*
USS JUNEAU	LPD 10					1.6
*	*	*	*	*	*	*

4. Table Five of § 706.2 is amended by revising the entry for the USS JUNEAU (LPD 10) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained.
*	*	*	*	*	*
USS JUNEAU	LPD 10	N/A	N/A	X	54.8
*	*	*	*	*	*

Dated: April 16, 1999.

Approved:

R.R. PIXA,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

Dated: May 3, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Certifying Officer.

[FR Doc. 99-12105 Filed 5-12-99; 8:45 am]

BILLING CODE 3810-FF-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

Landownership Adjustment; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects an oversight that occurred when regulations pertaining to land exchanges were adopted in 1994. The final land exchange rule failed to

correctly conform the citations for administrative appeal regulations applicable to appealing land exchange decisions. This technical amendment corrects that oversight, making it clear that the appeal procedures to be followed are those in 36 CFR part 215, not part 217.

EFFECTIVE DATE: This rule is effective May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Greg Smith, Lands Staff, MAIL STOP 1124, Forest Service, USDA, PO Box 96090, Washington, DC 20090-6090, 202-205-1769.

SUPPLEMENTARY INFORMATION: On March 8, 1994, the Department adopted a final rule (59 FR 10854) at 36 CFR part 254 revising procedures for Forest Service land exchange activities as authorized by the Federal Land Exchange Facilitation Act of August 20, 1988. When the Forest Service published the proposed land exchange rule in 1991, the applicable appeal regulations were at 36 CFR parts 251 and 217. At that time, part 217 covered appeals of both plan and project level decisions. However in 1993, the Department adopted new appeal regulations at 36 CFR part 215 (58 FR 58904) and

simultaneously revised the appeal rules at 36 CFR part 217 to apply solely to National Forest Land and Resource Management Plan decisions. When the Department proceeded to the final land exchange rule, the citations to the appeal regulation inadvertently was not changed to conform to the 1993 appeal rules.

Decisions pertaining to specific land exchanges are not National Forest Land and Resource Management Plan decisions and, therefore, have not been appealable under 36 CFR part 217 since 1993 pursuant to section 322 of the Department of the Interior and Related Agencies Appropriations Act of 1993 (16 U.S.C. 1612 note). Instead, these land exchange decision concern projects or activities that implement land and resource management plans and therefore are subject to appeal under CFR part 215. This rule corrects the citations in 36 CFR part 254 at § 254.4(g), § 254.13(b), and § 254.14(b)(6).

This oversight was discovered only recently, and the agency is moving to correct this citation error as quickly as possible to avoid any further confusion.

Compliance With Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) of the Administrative Procedure Act, the Forest Service had determined that good cause exists for adopting this final rule without prior notice and comment opportunity. This rule is a technical amendment. The need for this rule arises from the agency's inadvertent failure to conform cross references in land exchange regulations at 36 CFR part 254 in a 1994 final rule to changes in administrative appeal regulations at 36 CFR parts 215 and 217 adopted in 1993. This conforming amendment does not alter the agency's practice with regard to administrative appeals of land exchange decisions. The agency has been routinely processing appeals of land exchange decisions under 36 CFR part 215, since land exchange decisions are project-level decisions, not land and resource management plan decisions. Because this rulemaking does not make any substantive changes to regulations for land exchanges, does not limit appeal rights for decision related to land exchange activities, and merely conforms a cross reference to the appeal regulations that are actually in use, notice and comment on this rule prior to adoption is unnecessary.

Regulatory Impact

This rule is a technical amendment to correct a reference to another rule. As such, it has no substantive effect, since by the terms of the appeal rules at 36 CFR part 217, only land and resource management plan decision are subject to that rule. Additionally, despite the cross-reference error in part 254, the agency has been processing land exchange appeals under part 215 since 1993. As noted in the preamble, land exchange decisions are not plan decisions. For these reasons, this technical amendment is not subject to review under USDA procedures and Exchange Order 12866 on Regulatory Planning and Review. Accordingly, this rule is not subject to Office of Management and Budget review under Executive Order 12866. Furthermore, this rule is exempt from further analysis under the Unfunded Mandates Reform Act of 1995; Executive Order 12778, Civil Justice Reform; Executive Order 12530, Takings Implications; the Regulatory Flexibility Act; or the Paperwork Reduction Act of 1995.

List of Subjects in 36 CFR Part 254

Community facilities and national forests.

Therefore, for the reasons set forth in the preamble, part 254 of Title 36 of the

Code of Federal Regulations is amended as follows:

PART 254—[Amended]

1. The authority citation for part 254 continues to read:

Authority: 7 U.S.C. 428a(a) and 1011; 16 U.S.C. 484a, 486, 516, 551, and 555a; 43 U.S.C. 1701, 1715, and 1740; and other applicable laws.

2. Revise paragraph (g) of § 254.4 to read as follows:

§ 254.4 Agreement to initiate an exchange.

* * * * *

(g) The withdrawal from an exchange proposal by an authorized officer at any time prior to the notice of decision, pursuant to § 254.13 of this subpart, is not appealable under 36 CFR part 215 or 36 CFR part 251, subpart C.

3. Revise paragraph (b) of § 254.13 to read as follows:

§ 254.13 Approval of exchanges; notice of decision.

* * * * *

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, the decision shall be subject to appeal as provided under 36 CFR part 215 or, for eligible parties, under 36 CFR part 251, subpart C.

4. Revise paragraph (b)(6) of § 254.14 to read as follows:

§ 254.14 Exchange agreement.

* * * * *

(b) * * *
(6) In the event of an appeal under 36 CFR part 215 or 36 CFR part 251, subpart C, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and

* * * * *

Dated: April 2, 1999.

Sandra Key,

Acting Associate Chief.

[FR Doc. 99-12048 Filed 5-12-99; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192-0132a; FRL-6334-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revisions, Mojave Desert Air Quality Management District and Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP) which concern the revision of rules for the Mojave Desert Air Quality Management District (MDAQMD) and Tehama County Air Pollution Control District (TCAPCD). These rules concern emissions from orchard heaters and fuel burning equipment. The intended effect of this action is to bring the MDAQMD and TCAPCD SIPs up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 12, 1999 without further notice, unless EPA receives relevant adverse comments by June 14, 1999. If EPA receives such comments then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 2020 "L" Street,
Sacramento, CA 95812.
Mojave Desert Air Quality Management
District, 15428 Civic Drive, Suite 200,
Victorville, CA 92392-2383
-Tehama County Air Pollution Control
District, 1760 Walnut Street, Red
Bluff, CA 96080.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for revision from the MDAQMD portion of the California SIP are included in San Bernardino County Air Pollution Control District (SBCAPCD) Regulation VI, Orchard, Field or Citrus Grove Heaters, consisting of Rule 100, Definitions; Rule 101, Exceptions; Rule 102, Permits Required; Rule 103, Transfer; Rule 104, Standards for

Granting Permits; Rule 109, Denial of Application; Rule 110, Appeals; Rule 120, Fees; Rule 130, Classification of Orchard Heaters; Rule 131, Class I Heaters Designated; Rule 132, Class II Heaters Designated; Rule 133, Identification of Heaters; Rule 134, Use of Incomplete Heaters Prohibited; Rule 135, Cleaning, Repairs; Rule 136, Authority to Classify Orchard Heaters; and Rule 137, Enforcement. These rules were previously submitted by the California Air Resources Board (CARB) to EPA on June 30, 1972 and approved on September 22, 1972, 37 FR 19812, for incorporation into the SIP. These rule rescissions were adopted by the MDAQMD on June 24, 1996 and submitted by CARB to EPA on March 3, 1997.

The rule being proposed for rescission from the TCAPCD portion of the California SIP is TCAPCD Rule 4.13, Fuel Burning Equipment. This rule was previously submitted by CARB to EPA on February 21, 1972 and approved on May 31, 1972, 37 FR 10856, for incorporation into the SIP. This rule rescission was adopted by the TCAPCD on September 10, 1985 and submitted by CARB to EPA on February 10, 1986.

II. Background

On September 22, 1972, the EPA approved SBCAPCD Regulation VI, Rules 100–104, 109, 110, 120, and 130–137, Orchard, Field or Citrus Grove Heaters, for incorporation into the SIP. The SBCAPCD rescinded Regulation VI from its rulebook prior to 1977. The rescission of SBCAPCD Regulation VI was disapproved by EPA (43 FR 40018, September 8, 1978) as a SIP relaxation. On July 1, 1993, the SBCAPCD became the Mojave Desert Air Quality Management District (MDAQMD) by act of the California Legislature. In 1994, MDAQMD added portions of Riverside County, the Palo Verde Valley, and Blythe. The SBCAPCD rules remain in effect after July 1, 1993 until the MDAQMD rescinds or supersedes them. The rules being proposed for rescission by MDAQMD were originally adopted by SBCAPCD for the purpose of controlling emissions from orchard heaters. In the spring of 1995, the MDAQMD conducted a survey of affected industry to determine if Class I and Class II orchard heaters were still in use. The survey determined that no known facility within the MDAQMD uses this antiquated technology. Wind machines are currently used to protect crops from frost. Therefore, the rescission of SBCAPCD Regulation VI by MDAQMD does not relax the SIP control strategy.

On July 12, 1990, EPA approved TCAPCD Rule 4.9, Specific

Contaminants, and Rule 4.14, Fuel Burning Equipment (Operational), for incorporation into the SIP. Rule 4.13, Fuel Burning Equipment, is submitted for rescission, since Rules 4.9 and 4.14 provide regulation of the same pollutant emissions. Rule 4.9 regulates SOX and combustion contaminant (particulate matter) emissions by limiting the respective concentrations in the gas, instead of by absolute quantities of emissions. Rule 4.14 regulates NOX emissions by limiting the concentration in the gas, instead of by absolute quantity of emissions. SIP-approved Rules 4.9 and 4.14 strengthen the SIP relative to Rule 4.13, except for large fuel burning equipment with a capacity in excess of about 500 million British Thermal Units per hour. The TCAPCD does not have larger capacity sources; therefore, the rescission of TCAPCD rule 4.13 does not relax the SIP control strategy.

In response to section 110(a) and Part D of the Act, the State of California submitted many PM–10 rules for incorporation into the California SIP, including the rule rescissions being acted on in this document. This document addresses EPA's direct-final action for approving the rescission of SBCAPCD Regulation VI, which includes Rules 100–104, 109, 110, 120, and 130–137. The rescission was adopted June 24, 1996 by MDAQMD. This submittal was found to be complete on August 12, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.¹ These rules are being proposed for rescission from the SIP. This document also addresses EPA's proposed action approving the rescission of TCAPCD Rule 4.13. The rescission was adopted by TCAPCD September 10, 1985. This rule is being proposed for rescission from the SIP. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules strengthen the SIP or maintain the SIP's control strategy.

EPA has evaluated the submitted rule rescissions and has determined that they

are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the rescission of SBCAPCD Regulation VI, Rules 100–104, 109, 110, 120, and 130–137 and TCAPCD Rule 4.13 are being approved under section 110(k)3 of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 12, 1999 without further notice unless the Agency receives relevant adverse comments by June 14, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 12, 1999 and no further action will be taken on the proposed rescissions.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to

¹ EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful

and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a

Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: April 9, 1999.

David P. Howekamp,
Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (b)(3)(ii) and (c)(6)(xv)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(3) * * *

(ii) Previously approved on May 31, 1972 and now deleted without replacement Rule 4.13.

* * * * *

(c) * * *

(6) * * *

(xv) * * *

(B) Previously approved on September 22, 1972 and now deleted without replacement Rules 100 to 104, 109, 110, 120, and 130 to 137.

* * * * *

[FR Doc. 99-11825 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[IA 069-1069a; FRL-6340-3]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve two State Implementation Plan (SIP) revisions submitted by the state of Iowa. These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards and with respect to hazardous air pollutants (HAP). The effect of this action is to ensure Federal enforceability of the state's air program rule revisions.

DATES: This direct final rule is effective on July 12, 1999 without further notice, unless EPA receives adverse comment by June 14, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be addressed to Wayne A. Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726

Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Wayne Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is approval under section 112(l)?

What is being addressed in this notice?

What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is Approval Under Section 112(l)?

Section 112(l) of the CAA provides authority for EPA to implement a program to regulate HAPs, and to subsequently delegate authority for this program to the states. EPA has delegated authority for this program to Iowa and has approved relevant state HAP rules under this authority. In this action, EPA is approving revisions to the section 112(l) approved state rules.

What Is Being addressed in This Notice?

The Iowa Department of Natural Resources (IDNR) revised a number of its rules in order to maintain equivalency with Federal requirements and to adopt hospital/medical/infectious waste incinerator regulations. The revisions include an update to the definitions rule, to the permitting rules, and to the testing and monitoring rule. The state also adopted by reference the revised Federal National Ambient Air Quality Standards promulgated on July 15, 1997.

The revised rule chapters are: Chapter 20, "Scope of Title-Definitions-Forms-Rules of Practice"; Chapter 22, "Controlling Pollution"; Chapter 23,

"Emissions Standards for Contaminants"; Chapter 25, "Measurement of Emissions"; and Chapter 28, "Ambient Air Quality Standards," 567 Iowa Administrative Code. Specific Chapter paragraphs and subparagraphs which were revised are: 20.2, 22.1(1), 22.1(2), 22.1(3), 22.203(1), 22.203(2), 22.300(8), 23.1(1), 25.1(10), and 28.1. All of these rules are being approved under the authority of section 110, and the underlined rules are also being approved under the authority of section 112(l).

These revisions to the Iowa SIP were submitted by Larry Wilson, IDNR Director, on December 11, 1998, and January 29, 1999. The state effective date for these revisions are October 14, 1998, except for rules 22.1(2) and 25.1(10), which were effective December 23, 1998.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittals have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support documents which are part of this notice, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is processing this action as a direct final action because this amendment to the Iowa SIP makes routine revisions to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

Conclusion

Final Action

EPA is taking final action to approve, as an amendment to the Iowa SIP, rule revisions submitted by the state of Iowa as discussed above. These rules are being approved under the authority of section 110, and, for certain rules, the authority of section 112(l).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 12, 1999 without further notice unless the

Agency receives adverse comments by June 14, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 12, 1999, and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments; a summary of the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O.

12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit

enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1999. Filing a petition

for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 28, 1999

William Rice,

Regional Administrator, Region VII.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. In section 52.820 the following entries for paragraph (c), EPA-approved regulations, are revised to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20 Scope of Title-Definitions-Forms-Rule of Practice				
* * * * *				
567–20.2	Definitions	10/14/98	5/13/99 64 FR 25827.	
* * * * *				
Chapter 22 Controlling Pollution				
* * * * *				
567–22.1	Permits Required for New or Existing Stationary Sources.	12/23/98	5/13/99 64 FR 25827	Subrule 22.1(3) "b"(9) has not been approved.
* * * * *				
567–22.203	Voluntary Operating Permit Applications	10/14/98	5/13/99 64 FR 25827.	

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Comments
* 567–22.300	* Operating Permit by Rule for Small Sources.	* 10/14/98	* 5/13/99 64 FR 25828.	* *
*	*	*	*	*
Chapter 23 Emission Standards for Contaminants				
* 567–23.1	* Emission Standards	* 10/14/98	* 5/13/99 64 FR 25828	* Sections 23.1(2)–(5) are not approved in the SIP.
*	*	*	*	*
Chapter 25 Measurement of Emissions				
* 567–25.1	* Testing and Sampling of New and Existing Equipment.	* 12/23/98	* 5/13/99 64 FR 25828	* Subrule 25.1(12) has not been approved.
*	*	*	*	*
Chapter 28 Ambient Air Quality Standards				
* 567–28.1	* Statewide Standards	* 10/14/98	* 5/13/99 64 FR 25828.	* *
*	*	*	*	*

[FR Doc. 99–11823 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA012–0144a, FRL–6335–3]

Approval and Promulgation of Implementation Plan for South Coast Air Quality Management District**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: The EPA is taking direct final action to approve revisions to a number of South Coast Air Quality Management District (District) rules contained in the District Regulation II. The District submitted these rules for the purpose of meeting the requirements of the Clean Air Act (CAA), as amended in 1990 with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS).

This approval action will incorporate these rules into the federally approved State Implementation Plan (SIP) for California. The rules were submitted during 1991 and 1994 by the State to satisfy certain Federal requirements for an approvable NSR SIP. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on July 12, 1999 without further notice, unless EPA receives adverse comments by June 14, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Nahid Zoueshtigh (Air-3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are

available for public inspection at EPA's Region 9 office during normal business hours at the following address:

Permits Office (Air-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the submitted rules are also available for inspection at the following locations: Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814. South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtigh, (Air-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1261.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for nonattainment NSR are set out in part

D of title I of the CAA. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA has also proposed regulations to implement the changes under the 1990 Amendments in the NSR provisions in parts C and D of Title I of the Act. [See 61 FR 38249 (July 23, 1996)]. Upon final promulgation of those regulations, EPA will review those NSR SIP submittals on which it has already taken final action to determine whether additional SIP revisions are necessary.

Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

The District held public hearings on its actions on these rules. The dates for public hearing, adoption or rescission and submission to EPA are as follows:

Rules 201, 203, 205, 209, 214, 215, 216 and 217 (revised): Public hearing on December 1, 1989; adoption on January 5, 1990; and submission to EPA on May 13, 1991.

Rule 201.1 (new): Public hearing December 1, 1989; adoption on January 5, 1990; and submission to EPA on May 13, 1991.

Rules 204, 206 and 210 (revised): Public hearing and adoption on October 8, 1993; and submission to EPA on February 28, 1994.

Rules 203.1, 203.2, 204.1, 213, 213.1, and 213.2 (rescinded): Public hearing and rescission on June 28, 1990; and submission to EPA on April 5, 1991.

Rule 211 (rescinded): Public hearing on December 1, 1989; rescission on January 5, 1990; and submission to EPA on May 13, 1991.

Three of the rescinded rules (Rules 203.1, 203.2, 204.1) were not a part of the federally-approved SIP. Therefore EPA is not taking any action on them.

Summary of Rule Contents

The District submitted the above rules to EPA for adoption into the applicable NSR SIP Rules.

The rules subject to this action are in District Regulation II and apply to all sources requiring Permits to Construct or Permits to Operate. The rules describe applicability and procedures for applying for a Permit to Construct or a Permit to Operate, and provide procedures and timetables for issuance, denial and appeal of permits. These rules are separate from the federal operating permit program under Regulation XXX of the District. The revisions made to the rules subject to this action are mainly to provide: (1) An administrative change to reflect District's current organizational authority such as replacing the term Air Pollution Control Officer (APCO) with the term Executive Officer (EO) in Rules 201 and 217; (2) editorial clarifications in Rules 203 and 209; (3) amendment and improvement of the rule language in Rules 204, 206 and 210 to refer to the Title V (federal operating permit program); (4) additional rule (Rule 201.1) to enforce permit conditions contained in federally issued permits; and (5) detailed procedures and timetables for permit issuance, denial and appeals procedures in Rules 214, 215, and 216. For a description of how these rules meet the CAA's applicable requirements, please refer to EPA's technical support document (TSD) contained in the Docket.

EPA Evaluation and Action

EPA has evaluated amended Rules 201, 203, 204, 205, 206, 209, 210, 214, 215, 216, 217, and new Rule 201.1. EPA has determined that the rules are consistent with the CAA, EPA regulations and EPA policy. Therefore, District Rules 201, 201.1, 203, 204, 205, 206, 209, 210, 214, 215, 216 and 217 are approved into SIP.

Although initially part of the submittal, the District has rescinded Rules 203.1, 203.2, 204.1, 211, 213, 213.1, and 213.2. The EPA is not taking any action on Rules 203.1, 203.2 and 204.1 which were not a part of the SIP. However, the EPA is approving deletion of Rules 211, 213, 213.1 and 213.2 from the SIP. The District has incorporated the requirements of Rule 211 in its Rule 210. EPA has also determined that the requirements of Rules 213, 213.1 and 213.2 are now in Rule 212 and Regulation XIII which the EPA approved them into the SIP in December 1996. These rules which contain the requirements of the rescinded rules

were also subject to the District's public review process.

The EPA is taking this action under section 110(k)(3) of the CAA for these rules which meet the requirements of Section 110(a), and part D of Title I of the Act.

Administrative Review

The EPA is publishing this action without prior proposal in part because the District has provided public workshops in the development of the submitted rules, and provided the opportunity for public comment prior to adoption of the submitted rules. At that time, no significant comments were received by the District. The Agency therefore views this as a non-controversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This rule is effective on July 12, 1999 without further notice, unless EPA receives adverse comments by June 14, 1999. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 12, 1999.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their

concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments.

The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition,

Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of

California was approved by the Director of the **Federal Register** on July 1, 1982.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(31)(vi)(D), (c)(36)(i)(B), (c)(184)(i)(B)(7), and (c)(217)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(31) * * *

(vi) * * *

(D) Previously approved on November 9, 1978 and now deleted without replacement Rule 211.

* * * * *

(36) * * *

(i) * * *

(B) Previously approved on November 9, 1978 and now deleted without replacement Rule 213, 213.1, and 213.2.

* * * * *

(184) * * *

(i) * * *

(B) * * *

(7) Rules 201, 203, 205, 209, 214 to 217 amended on January 5, 1990 and Rule 201.1 adopted on January 5, 1990.

* * * * *

(217) * * *

(i) * * *

(C) South Coast Air Quality Management District.

(J) Rules 204, 206, and 210 amended on October 8, 1993.

* * * * *

[FR Doc. 99-11999 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL-6340-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions From Existing Hazardous/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the section 111(d) Plan submitted by the North Dakota Department of Health on October 6, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Hazardous/Medical/Infectious Waste Incinerators (HMIWI). The EG require States to develop plans to reduce toxic air emissions from all HMIWIs.

DATES: This direct final rule is effective on July 12, 1999, without further notice, unless we receive adverse comments by June 14, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Richard R. Long, EPA Region 8, Office of Air and Radiation (8P-AR), 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 8 offices, 999 18th Street, Suite 500, Denver, Colorado 80202, and at the North Dakota Department of Health offices, 1200 Missouri Avenue, Bismarck, North Dakota 58504-5264.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser at 303-312-6526.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What action is being taken by EPA today?
- II. Why do we need to regulate HMIWI emissions?
- III. What is a State Plan?
- IV. What does the North Dakota State Plan contain?
- V. Is my HMIWI subject to these regulations?
- VI. What steps do I need to take?
- VII. Administrative Requirements

I. What Action Is Being Taken by EPA Today?

We are approving North Dakota's State Plan, as submitted on October 6, 1998 for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When we developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed Emissions Guidelines (EG) to control air emissions from older HMIWIs. (See 62 FR 48348-48391, September 15, 1997). North Dakota developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and

anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective July 12, 1999, unless by June 14, 1999, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective July 12, 1999.

II. Why Do We Need To Regulate HMIWI Emissions?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, and toxic metals (lead, cadmium, and mercury). Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through the ingestion of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

III. What Is a State Plan?

Section 111(d) of the Act requires that pollutants, controlled under the NSPS must also be controlled at older sources in the same source category. Once an NSPS is promulgated, we then publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in this State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to and enforce.

IV. What Does the North Dakota State Plan Contain?

North Dakota adopted the Federal NSPS and EG by reference into its State regulations at NDAC 33-15-12-02. The North Dakota State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. State rules adopted into NDAC 33-15-12 as the mechanism for implementing the emission guidelines. The North Dakota 23-25-10 gives the North Dakota Department of Health the authority to enforce any properly adopted rule.
3. An inventory of approximately 76 known designated facilities, along with estimates of their toxic air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date of 3 years after environmental protection agency approval of the state plan but not later than September 16, 2002.
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing; and,
8. Provisions for progress reports to EPA.

The North Dakota State Plan was reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities*; and, 40 CFR 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators*. A detailed discussion of our evaluation of the North Dakota State Plan is included in

our technical support document, located in the official file for this action.

V. Is My HMIWI Subject to These Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

VI. What Steps Do I Need To Take?

You must meet the requirements listed in NDAC 33-15-12-02 Subpart Ce, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.
2. Each size category of HMIWI has certain emission limits established which your incinerator must meet. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. (40 CFR 60.33e, as listed at 62 FR 48382, September 15, 1997).
3. There are provisions to address small rural incinerators 40 CFR 60.33e(b), 60.36e, 60.37e(c)(d), and 60.38e(b), as listed at 62 FR 48380, September 15, 1997).
4. You must meet a 10% opacity limit on your discharge, averaged over a six-minute block (40 CFR 60.33e(c), as listed at 62 FR 48380, September 15, 1997).
5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c) (40 CFR 60.34e, as listed at 62 FR 48380).
6. Your operator must be certified, as discussed in paragraph 5 above, no later than one year after we approve this North Dakota State Plan (40 CFR 60.39e(e), as listed at 62 FR 48382).
7. You must develop and submit to the North Dakota Department of Health a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, *An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities*, 1993, and must be submitted to the Department of Health no later than one year after we approve this State Plan (40 CFR 60.35e, as listed at 62 FR 48380).
8. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits. This performance test

must be completed within 36 months of North Dakota's State Plan approval (40 CFR 60.37e and 60.8, as listed at 62 FR 48380).

9. You must install and maintain devices to monitor the parameters listed under Table 3 to Subpart Ec (40 CFR 60.37e(c), as listed at 62 FR 48381).

10. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years (40 CFR 60.38e, as listed at 62 FR 48381).

11. You must report to the North Dakota Health Department the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager (40 CFR 60.38e, as listed at 62 FR 48381).

12. In general, you must comply with all the requirements of this State Plan within one year after we approve it; however, there are provisions to extend your compliance date (40 CFR 60.39e, as listed at 62 FR 48381).

VII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866, entitled *Regulatory Planning and Review*.

B. Executive Order 12875

Executive Order 12875: *Enhancing the Intergovernmental Partnership*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal

governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule implements requirements specifically set forth by the Congress in sections 111 and 129 of the Clean Air Act, as amended in 1990, without the exercise of any discretion by EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant action under Executive Order 12866.

D. Executive Order 13084

Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and

timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule implements requirements specifically set forth by the Congress in sections 111 and 129 of the Clean Air Act, as amended in 1990, without the exercise of any discretion by EPA.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Pursuant to section 605(b) of the RFA, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under State, law and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal

governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 30, 1999.

Patricia D. Hull,

Acting Administrator, Region VIII.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart JJ—North Dakota

2. Add a new undesignated center heading and §§ 62.8610, 62.8611, and 62.8612 to subpart JJ to read as follows:

AIR EMISSIONS FROM HAZARDOUS/MEDICAL/INFECTIOUS WASTE INCINERATORS

§ 62.8610 Identification of Plan.

Section 111(d) Plan for Hazardous/Medical/Infectious Waste Incinerators and the associated State regulation in section 33-15-12-02 of the North Dakota Administrative Code submitted by the State on October 6, 1998.

§ 62.8611 Identification of Sources.

The plan applies to all existing hazardous/medical/infectious waste incinerators for which construction was commenced on or before June 20, 1996, as described in 40 CFR Part 60, Subpart Ce.

§ 62.8612 Effective Date.

The effective date for the portion of the plan applicable to existing hazardous/medical/infectious waste incinerators is July 12, 1999.

[FR Doc. 99-12001 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 73

[FRL-6341-2]

RIN 2060-A127

Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act: Compliance Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorized the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic particles and deposition and their serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health.

The allowance trading component of the Acid Rain Program allows utilities to achieve sulfur dioxide emissions reductions in the most cost-effective way. Utilities trade allowances and EPA records ownership and trades of allowances in the Allowance Tracking System for use in determining compliance at the end of each year. On January 11, 1993, EPA initially promulgated the regulations governing Acid Rain Program permitting and allowance trading. Today's action

revises certain provisions in the regulations concerning the deduction of allowances for determining compliance. The revisions will improve the operation of the Allowance Tracking System and the allowance market generally, while still preserving the Act's environmental goals.

EFFECTIVE DATE: June 14, 1999.

ADDRESSES: *Docket.* Docket No. A-98-15, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, S.W., Washington, DC 20460. EPA may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Permits and Allowance Market Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (202-564-9089).

SUPPLEMENTARY INFORMATION: This preamble contains all of the responses to public comments received on the revisions finalized in today's action.

The information in this preamble is organized as follows:

I. Affected Entities

II. Background

III. Public Participation

IV. Summary of Comments and Responses

- A. Allowance Deductions From Other Units at the Same Source
- B. Role of Authorized Account Representative
- C. Effective Date of Rule Revisions
- D. Impacts of Rule Revisions on Acid Rain Permits

V. Administrative Requirements

- A. Docket
- B. Executive Order 12866: Regulatory Planning and Review
- C. Executive Order 12875: Enhancing Intergovernmental Partnerships
- D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
- E. Unfunded Mandates Act
- F. Paperwork Reduction Act
- G. Regulatory Flexibility
- H. Applicability of Executive Order 13045: Children's Health Protection
- I. National Technology Transfer and Advancement Act
- J. Congressional Review Act

I. Affected Entities

Entities potentially affected by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity, generating steam, or cogenerating electricity and steam. Regulated categories and entities include:

Category	Examples of regulated entities
Industry: SIC 49—Electric, Gas and Sanitary Services.	Electric service providers, boilers from a wide range of industries.

EPA does not intend this table to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. This action could also affect other types of entities not listed in the table. To determine whether this action affects your facility, you should carefully examine the applicability criteria in § 72.6 and § 74.2 and the exemptions in §§ 72.7, 72.8, and 72.14 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On January 11, 1993, EPA promulgated the regulations that implemented the major provisions of title IV of the Clean Air Act (CAA or the Act), including the Permits rule (40 CFR part 72) and the Sulfur Dioxide Allowance System rule (40 CFR part 73). Since promulgation, these rules have applied to three compliance years, 1995, 1996, and 1997, for which the rules required affected units to meet annual allowance holding requirements. During this time, the Agency has gained experience in implementing the requirements and also discovered ways it could improve the operation of the Allowance Tracking System and allowance market. On August 3, 1998, EPA proposed changes to certain provisions in 40 CFR parts 72 and 73 to make these improvements. 63 FR 41358 (1998). These proposed changes related to the allowance transfer deadline, compliance determinations, and the signature requirements for allowance transfer requests. EPA finalized the proposed changes to the allowance transfer deadline and signature requirements for allowance transfer requests on December 11, 1998. 63 FR 68401 (1998). Today's action finalizes changes related to the deduction of allowances for compliance determinations.

III. Public Participation

EPA proposed revisions to 40 CFR parts 72 and 73 in the **Federal Register** on August 3, 1998. 63 FR 41358. The notice invited public comments. EPA

received and granted a request to extend the comment period by 15 days from September 2, 1998 to September 17, 1998.

EPA offered to hold a public hearing upon request, but no one made such a request and EPA did not hold a hearing. However, after the close of the comment period, EPA held several meetings with all parties that submitted comments, in order to clarify the parties' comments and positions on the issues raised on the notice of proposed rule-making. The parties subsequently submitted late comments further explaining their positions. Copies of memoranda describing the new information received by EPA at the post-comment period meetings are in the rulemaking docket.

IV. Summary of Comments and Responses

During the comment period, EPA received seven letters (or "initial comments") regarding the proposed revisions to the compliance determination provisions in the regulations.¹ Several months after the comment period, EPA received three additional letters (or "late comments") from the same commenters concerning the provisions. All of the commenters were representatives of utility companies or groups of utility companies. A copy of each comment received is in the rulemaking docket.

EPA carefully considered all of the comments and, where appropriate, made changes reflected in the final regulations. The following sections contain a summary of the comments received and the Agency's responses.

A. Allowance Deductions From Other Units at the Same Source

After the allowance transfer deadline, EPA determines whether each affected unit is in compliance with the requirement to hold allowances at least equal to the unit's sulfur dioxide emissions for the previous year. See 40 CFR 72.9(c)(1)(i). Units that do not meet the requirement are subject to the excess emissions and offset plan requirements in 40 CFR part 77.

On August 3, 1998, EPA proposed revisions that would change how it deducts allowances and determines the amount of excess emissions at a unit at the end of a compliance year. Under the proposed revisions, EPA would allow reduction (but not complete avoidance) of excess emissions that a unit would otherwise have after deductions for compliance under § 73.35(b)(2). EPA

would allow excess emissions to be reduced at a unit by allowing deductions of up to a certain number of allowances for that unit from the allowance accounts of other units at the same source that had unused allowances. The proposed revisions included a formula for calculating the allowance deductions allowed from other units' accounts. The formula would result in the unit making an excess emissions penalty payment equal to about three times the allowance price of the allowances needed to offset the unit's excess emissions in the absence of allowance deductions from other units' accounts. The Agency proposed these changes because EPA was concerned that a utility could become subject to an enormous penalty payment for making inadvertent, minor errors when accounting for allowances at the end of the year even if the utility had enough allowances among the units at the source.

All the commenters expressed general support of EPA's decision to propose rule changes that would allow utilities to reduce the effects of inadvertent, minor errors in accounting for allowances. The specific approach proposed by EPA for doing this, however, generated a variety of comments. The following discussion addresses these comments.

Comment: Several commenters stated in their initial comments that the proposed provision limiting the use of unused allowances to those held by other units at the same source was inconsistent with section 403(d)(2) of the Act.² The commenters argued that section 403(d)(2) authorizes "aggregation of allowances among units with the same designated representative" for purposes of determining compliance with the requirement to hold allowances covering a unit's annual SO₂ emissions. Comments of UARG at 7 (September 16, 1998). While section 403(d)(1) requires the Administrator to promulgate regulations establishing a system for issuing, recording, and tracking allowances, section 403(d)(2) provides:

In order to insure electric reliability, such regulations shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their

operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned. 42 U.S.C. 7651b(d)(2).

Commenters claimed that the last sentence of this section requires EPA to allow units with a common designated representative and included in the same utility system, power pool, or allowance pool to aggregate their allowances for use in determining whether these units hold allowances at least equal to their annual SO₂ emissions. The commenters noted that EPA acknowledges that title IV requires allowances to be held for a unit but does not specify the account in which the allowances must be held. According to these commenters, EPA should revise § 73.34 to allow a designated representative to cover a unit's emissions with allowances from any accounts for which he or she is the designated representative. The commenters argued that EPA should allow this regardless of whether the accounts are for units at the same source.

One of the commenters added that EPA's position that plant owners must fill thousands of unit compliance subaccounts with an exact or an excess number of allowances in order to avoid a penalty is unproductive both for EPA and plant owners. The commenter stated that EPA should give the designated representative the option of naming the unit's compliance subaccount as the primary allowance source and general accounts as secondary and tertiary accounts from which EPA could deduct allowances at year end.

Response: EPA disagrees with the commenters who asserted that the provision limiting the use of unused allowances to those held by other units at the same source is inconsistent with section 403(d)(2) of the Act. As discussed below, EPA maintains that the same-source limitation—coupled with the limit on the number of allowances a unit can use from another unit—are consistent with the pervasive unit-by-unit orientation of title IV (including section 403(d)(2)).³ See also

¹ Although EPA received five of the seven comment letters one to five days after the close of the comment period, EPA is responding to all seven comment letters.

² These commenters subsequently stated, in late comments, that the Agency would satisfy all their concerns if, among other things, EPA increased the amount of allowances potentially deducted from other units at the same source beyond the amount provided in the proposed revisions. Because regulations implementing the Acid Rain Program must be consistent with title IV, EPA is addressing here the issue of statutory consistency.

³ To the extent some commenters asserted section 403(d)(2) authorizes, rather than requires, the Agency to allow the use of allowances from units

63 FR 41362 (consistency with section 403(g), 411, and 414). Further, to the extent allowing a unit to use any allowances from another unit is a departure from a strict unit-by-unit approach, the same-source limitation closely restricts any such departure by allowing a unit to use only allowances held for units that are at the same geographic location, i.e., the same plant.

As explained in the preamble of the proposed rule, title IV incorporates a pervasive unit-by-unit orientation, particularly with regard to SO₂ emissions. Title IV requires: determination of applicability of the Acid Rain Program unit-by-unit; allocation of allowances and setting of SO₂ emissions limitations generally unit-by-unit; determination of excess emissions and penalties unit-by-unit; and monitoring of emissions generally unit-by-unit. See 63 FR 41360.

Maintaining that section 403(d)(2) similarly reflects this unit-by-unit orientation, EPA rejects the commenters' interpretation that section 403(d)(2) requires the Agency to allow designated representatives to use allowances from units at other sources. The last sentence of section 403(d)(2) is ambiguous, but EPA maintains that a reasonable interpretation is that this section requires a unit-by-unit orientation in compliance. The first sentence of the section states that the allowance system regulations shall not prohibit temporary changes in emissions by units included in utility systems, power pools, or allowance pools and that such changes will not require allowance transfers. The second sentence requires that all owners or operators of such units act through a designated representative. The third sentence states that total annual emissions from "all" such units cannot "exceed the total allowances for such units" for the year involved. *Id.*

This reference in the third sentence to "all" units either could mean each and every unit in a particular utility system, power pool, or allowance pool or could mean all units in the aggregate in such a system or pool. Thus, the statutory language could arguably support either of two possible interpretations: (1) Total annual emissions for each unit in a particular utility system, power pool, or allowance pool must not exceed the unit's total allowances; or (2) the aggregate annual emissions of all the units in the utility system, power pool, or allowance pool must not exceed the aggregate allowances for all these units.

at other sources, EPA interprets the provision to mean that the Agency is neither required nor authorized to allow the use of such allowances.

While the commenters support the second interpretation, EPA has consistently followed the first interpretation. See 56 FR 63002, 63049–50 (1991) (explaining that section 403(d)(2) does not "require or authorize" pool-wide compliance). For the following reasons, EPA continues to adopt the first interpretation.

First, as discussed above, title IV incorporates a unit-by-unit orientation. While these other provisions of title IV may not be determinative of the proper interpretation of section 403(d)(2), EPA maintains it is reasonable to interpret section 403(d)(2) to reflect the same unit-by-unit orientation that Congress adopted in the major statutory provisions governing the Acid Rain Program. The commenters' interpretation would represent a significant departure from the other provisions of title IV.

Second, contrary to the commenters' claim, the legislative history of title IV supports EPA's interpretation, rather than the commenters' interpretation, of section 403(d)(2). The most authoritative document in the legislative history, the Conference Report that accompanied the Clean Air Act Amendments of 1990, states that section 403(d):

Makes it clear that allowances are annual; temporary increases and decreases in emissions within utility systems or power pools do not require allowance transfers or recordation so long as the total tonnage emitted in any year matches allowances held for that year. Thus, *utilities must "true up" at year end to ensure that allowances match emissions for each unit.* Conference Report, House Rep. No. 101–952, 101st Cong. 2d Sess. at 343 (October 26, 1990) (emphasis added).

In short, the Conference Report indicates that, at the end of each year, allowances must cover emissions *for each unit* in a utility system or pool, not for all units in the system or pool on an aggregate basis.

Ignoring the Conference Report, the commenters instead focused on comparing the enacted provisions of title IV with provisions of an earlier House version (H.R. 3030) of title IV. The House bill (in section 503(d)(4) of H.R. 3030) required promulgation of regulations for a system of issuing, recording, and tracking allowances and stated that:

In order to insure electric reliability, such regulations shall not prohibit or affect temporary increases and decreases in emissions within utility systems or power pools that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of

allowances among units nor shall it require recordation. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from each unit involved shall not exceed the allowances allocated to the unit for the calendar year concerned and issued to the owner or operator of the unit for that year, plus or minus allowances transferred to or from the unit for such calendar year or carried forward to that year from prior years. House Rep. No. 101–490, 101st Cong. 2d Sess. at 629–30 (May 17, 1990).

In the House Committee Report accompanying the House bill, the House Committee on Commerce and Energy explained this House bill provision using language subsequently adopted word-for-word in the Conference Report (quoted above) to explain section 403(d)(2) of the final version of title IV. See House Rep. No. 101–490 at 373–74. In particular, the House Report explained that utilities must ensure at the end of each year that "allowances match emissions for each unit." *Id.* at 374. The fact that the Conference Committee explained section 403(d)(2) using, word-for-word, the House Committee's explanation of unit-by-unit compliance provided under the House bill indicates that Congress intended to continue to require unit-by-unit compliance in section 403(d)(2). This also shows that Congress did not intend the language differences between section 403(d)(2) and the comparable House bill provision to alter the requirement for unit-by-unit compliance. Thus, the Conference Report and House Committee Report belie the importance the commenters place on the difference between the reference in section 403(d)(2) to total emissions and total allowances for "all units" in a utility system, power pool, or allowance pool agreements and the reference in the House bill to emissions and allowances of "each unit."

Rather than addressing the Conference Report or the House Committee Report, the commenters based their argument on a floor statement of one member of the House of Representatives. The Courts do not generally consider Congressmen's floor statements alone as providing authoritative explanations of Congressional intent. See, e.g., *Garcia v. U.S.*, 469 U.S. 70, 76 and 78 (1984); *Brock v. Pierce*, 476 U.S. 253, 263 (1986); and *U.S. v. McGoff*, 831 F.2d 1071, 1090–91 (D.C. Cir. 1987).

Moreover, the floor statement on which the commenters rely does not support their interpretation of section 403(d)(2). In the statement cited by the commenters, Congressman Oxley stated:

Barriers to allowance transactions may take any number of forms, and the Administrator must use great care to avoid doing anything to help erect those barriers. That is why the conference committee has streamlined the process whereby a utility or utilities can pool allowances so as to operate within the confines of the law. Under provisions of the allowance tracking system, we have provided for the creating of allowance pools. Owners or operators need only record with the Administrator that they intend to enter into such agreements. Once in place, these voluntary pooling agreements can operate to reduce the number of actual transfers of allowances and, thus, the overall compliance burden. For example, utilities or operating companies can keep and share one set of allowance books to accommodate their emission allowance requirements. Here, as elsewhere, it is necessary to keep the volume of information that buyers and sellers are required to provide to a minimum, lest the system breakdown in the face of heavy trading. *A Legislative History of the Clean Air Act Amendments of 1990*, Vol. 1 at 1418 (1990) (quoting from House debate on the Conference Report and bill on October 26, 1990).

The Congressman's statement addresses the use of allowance pools to reduce "[b]arriers to allowance transactions," *not* the use of allowance pools to show compliance with the requirement to hold allowances at least equal to each unit's annual SO₂ emissions. *Id.* The ability to hold allowances in a single account for all units in a utility system, power pool, or allowance pool reduces the number of allowance transfers submitted to the Administrator for recordation in the Allowance Tracking System. Once such an allowance account is established, a utility system, power pool, or allowance pool can, for internal bookkeeping purposes, move allowances among any of the units in the utility system, power pool, or allowance pool throughout the year and, for purposes of the Allowance Tracking System, hold the allowances in the same account (i.e., a general account for the utility system, power pool, or allowance pool). See 40 CFR 73.31(c) (providing for the establishing of "general accounts" by "any person"). However, this does not negate the requirement that, for compliance purposes, the designated representative must ultimately transfer the allowances to each unit's individual allowance account by the allowance transfer deadline. In fact, this is just the sort of annual "true up" for each unit that Congress described in the Conference Report.

In short, EPA concludes that its long-standing interpretation of the ambiguous language in section 403(d)(2) is a reasonable reading of the statutory language and is consistent with other

provisions of title IV and with the legislative history.

Today's final rule is consistent with the requirement, reflected in section 403(d)(2), that each unit have allowances covering its emissions. The rule restricts the number of allowances that can be held for a unit by other units and requires that these other units must be at the same source. As a result, EPA believes that there is still strong incentive for owners and operators to hold sufficient allowances in an affected unit's account and that owners and operators will routinely comply on a unit-by-unit basis and only use allowances from other units at the source in unusual circumstances, e.g., to correct an inadvertent error. Of course, the allowances that a unit uses from other units must be from the same geographic location, i.e., the same plant. See 63 FR 41362–41363 (explaining that, in effect, common stack units can already use allowances from other units, but only at the same plant, under § 73.35(e)). EPA therefore maintains that today's final rule is consistent with section 403(d)(2) and strikes a reasonable balance between the unit-by-unit orientation of title IV and compliance flexibility to reduce excess emission penalty payments where units fail to hold enough allowances because of inadvertent, minor errors.

The same-source restriction in the final rule is not only consistent with title IV, but also is practical to implement. The restriction ensures that only one designated representative is involved in the deduction of allowances from other units' compliance subaccounts. The limitation thereby minimizes the changes necessary to existing contracts involving allowance agreements among different owners of units.

Finally, in response to the commenter that supported allowing a designated representative the option of naming a unit's primary, secondary, and tertiary accounts from which EPA would deduct allowances, EPA notes that the allowance account tracking necessary to implement the approach would be far too complicated and unwieldy. Such a time and resource intensive approach would likely cause significant and unacceptable delays in EPA's ability to perform timely end of year accounting and unfreeze allowance accounts. After the allowance transfer deadline, allowances that are useable for the compliance year must be frozen until EPA completes the process of deducting allowances to cover each unit's emissions.

Comment: Several commenters stated in initial comments that units should be

able to use available allowances from other unit accounts after the allowance transfer deadline to avoid all excess emissions. They argued that the language in section 403(d)(2), quoted and discussed above, reflects Congress' intent that EPA allow full offsetting. One of these commenters argued that allowing the use of allowances from other unit accounts to avoid excess emissions completely would not compromise the Acid Rain Program's unit-by-unit orientation because EPA would deduct allowances from the affected unit's compliance subaccount first, before allowing deductions from other units at the same source. The commenter also pointed out that under the proposed rule, the consequences of making an inadvertent error (such as transposing figures in allowance serial numbers in an allowance transfer form so the transaction transfers an insufficient number of allowances to a unit) could widely vary, depending on the exact error made. Suggesting that the penalties should not differ for the same type of error, the commenter argued that allowing units to avoid excess emissions with all available allowances at other unit accounts would address this concern.

Response: EPA rejects the commenters' views that EPA must allow the full use, instead of the limited use, of allowances in other units' compliance subaccounts. As discussed above, the Act has a pervasive unit-by-unit orientation and, therefore, the final rule allows the designated representative to use, for a unit that would otherwise have excess emissions, a large portion (but not all) of the needed allowances from the compliance subaccounts of other units at the same source. Further, for the reasons detailed above, EPA rejects the commenters' interpretation of section 403(d)(2).

In response to the commenter who claimed that allowing the complete avoidance of excess emissions would not compromise the unit-by-unit orientation of title IV, EPA does not agree. Allowing units to use allowances from other unit compliance subaccounts to avoid completely excess emissions and the resulting excess emissions penalty payment provides owners and operators with little or no incentive to ensure that the individual account for each of their units holds sufficient allowances at the end of each year. While the flexibility to deduct allowances from other units is aimed at minor, inadvertent errors, owners and operators can use this flexibility when any errors occur. 63 FR 41363. Providing this flexibility without any significant, excess emissions penalty

payment would likely discourage efforts to ensure unit-by-unit compliance and encourage routine use of allowances from other units at the same source.

In response to the same commenter's concerns that under EPA's proposal the amount of a unit's allowance deficiency and the resulting penalty payment resulting from an inadvertent error could vary widely depending on the specific error, EPA notes that this potential variance already exists under the current rule. The proposed rule—and to a greater extent, today's final rule—actually reduces the potential variance by reducing the penalty payment for minor, inadvertent errors. By reducing the potential penalties, the final rule helps to alleviate the problem of widely divergent penalties. As discussed above, EPA believes that the final rule thus balances the unit-by-unit orientation of title IV with increased compliance flexibility.

Comment: EPA received several initial and late comments on the formula, in proposed § 73.35(b)(3)(i), for calculation of the maximum allowances available for a unit for deduction from other unit accounts. The proposed formula would use a ratio of three times the average allowance price for the year to the excess emissions penalty per ton in order to limit deductions from other unit accounts. Notwithstanding the ratio, the proposed formula also would not allow deductions from other unit accounts that would bring excess emissions below 10 tons. This would establish a minimum penalty where the formula is used.

In their initial comments, several commenters raised objections to the formula. After objecting to any limitation being placed on the number of allowances that could be deducted, one commenter stated that if EPA adopted such a limitation, the Agency should revise the formula to allow use of more allowances from other unit accounts. Specifically, this commenter recommended revising the formula to change the ratio of three times the allowance price to the excess emissions penalty to a ratio of one times the allowance price to the excess emissions penalty. The commenter also recommended, notwithstanding the formula, imposing a 10 percent cap as the maximum amount of allowances that a unit could not use from other units' accounts to offset a unit's emissions. The commenter claimed that this approach would result in utilities planning to comply under the existing unit-by-unit approach to avoid the financial penalty represented by even a limited discount factor.

A second commenter argued in initial comments that, because minor accounting mistakes would typically result in less than 10 tons of excess emissions, EPA's proposed formula and 10-ton minimum penalty was arbitrary and capricious. This commenter further claimed that if EPA did not revise the proposal to allow the use of unlimited allowances from other unit accounts, EPA should at least revise the formula to penalize the first excess emission ton much less than the eleventh excess emission ton. In a third set of initial comments, another commenter stated that EPA should revise the formula to allow deduction of any needed allowances from other unit accounts without penalty if less than 10 tons of excess emissions occurred. A fourth commenter characterized the formula as too complicated.

As noted above, EPA held several post-comment period meetings with all parties that submitted initial comments. During these meetings, the parties and EPA discussed the initial comments and their views concerning issues, raised in the preamble of the proposed rule, about the proposed formula. In particular, the participants addressed reducing or removing the allowance-price-to-excess-emissions-penalty ratio, retaining the 10-ton minimum, and adding a percentage cap on the amount of allowances that a unit could not use from other units' accounts to offset a unit's emissions. The participants discussed these issues in the context of alternative scenarios for the formula, all of which were logical outgrowths of the proposed rule. As a result of these discussions, the commenters submitted late comments to the Agency on these issues to supplement their views. EPA has taken these late comments into consideration in developing the final rule.

Response: The proposed formula generally would make it four times as expensive to not hold enough allowances in a unit account than to hold enough allowances in the unit's account, as of the allowance transfer deadline.⁴ EPA agrees that, in light of the kinds of errors the revisions are

meant to address (i.e., inadvertent, minor ones), the penalty payment, after application of the proposed formula, could still be excessive. Therefore, EPA believes that it should modify the proposed formula to allow the deduction of more allowances from other units at the same source.

EPA considered the suggestion, in initial comments, of increasing the allowances allowed to be deducted from other unit accounts by changing the proposed formula so that it contains a ratio of one times the average allowance price to the excess emissions penalty, instead of three times the average allowance price to the excess emissions penalty. EPA agrees that such a change would result in a total penalty payment that is more in line with the gravity of making an inadvertent, minor error. Nevertheless, EPA is concerned that making only this change would fail to address comments that the deduction formula is overly complicated. EPA maintains that the penalty formula will be more effective if it is simpler and easier to apply.

EPA and the commenters discussed a simplified formula for calculation of penalties in the post-comment meeting on December 3, 1998. In late comments, commenters stated that if EPA adopted this simplified formula, the Agency would satisfy their concerns about the proposed formula. Under the simplified formula, the owner or operator of a unit may use from the compliance subaccounts of other units at the same source up to 95 percent of the allowances needed after using all the allowances in the unit's own compliance subaccount. However, the simplified formula retains the 10-ton minimum on the amount of excess emissions remaining after using allowances from other units' accounts.

The simplified formula has a result comparable to that of the formula suggested in initial comments that would reduce the ratio in the proposal from three to one times the average allowance price to the excess emissions penalty. Under 1998 market conditions, both the commenter's suggested formula and the simplified formula would result in allowing deduction of 95 percent of the allowances needed by a unit from other unit accounts (i.e., using the 1998 average allowance price of \$117 and an excess emissions penalty of \$2581 per ton of excess emissions). While the average allowance price and excess emissions penalty may change each year, resulting in a disparity in the allowances calculated under the commenter's suggested formula and the

⁴ Under the proposed revisions, a unit that simply complied with the allowance holding requirement would use one allowance for each ton of emissions (e.g., 100 allowances for 100 tons of SO₂). However, if the unit failed to comply with the allowance holding requirement using its own allowances, the unit would use one allowance (i.e., from either another unit account or a future year account under the offset provisions in § 77.3) for each ton of emissions (e.g., 100 allowances for 100 tons of SO₂), plus its owners and operators would be subject to an excess emissions penalty payment approximately equal to the cost of three allowances for each ton of emissions (e.g., the cost of 300 allowances).

formula in the final rule,⁵ EPA believes this is not a significant concern. EPA sees no overwhelming reason to ensure the penalty payment increases as average allowance price increases, as long as the penalty payment for excess emissions remains significant and provides owners and operators with a strong incentive to comply with the allowance holding requirements on a unit-by-unit basis.

Under both the proposed formula and the simplified formula, the excess emissions remaining after deductions from other unit accounts are subject to the excess emissions penalty of \$2000 per ton, as adjusted by the Consumer Price Index.

In light of the late comments unanimously supporting the simplified formula discussed in the December 3, 1998 post-comment period meeting, EPA has decided to modify the proposal and adopt the simplified formula. Use of the simplified formula will increase, by an amount comparable to the amount suggested in initial comments, the number of allowances that can be deducted from other unit accounts. EPA believes that the simplified formula will achieve the objectives intended by the proposed formula, but will be far easier for both the utilities and EPA to use to calculate the amount of excess emissions.

As noted above, the simplified formula retains the 10-ton minimum on the amount of excess emissions that remains after deducting allowances from other units' accounts. EPA believes the restriction is necessary to ensure that, for units with 10 or more tons of emissions exceeding the allowances in their unit accounts (before deducting from other unit accounts), the penalty remains significant. This will provide owners and operators with a strong incentive to meet their allowance holding requirements on a unit-by-unit basis. EPA also notes that, under the final rule, a unit having the minimum 10 tons of excess emissions (after the formula is applied) for 1998 will be subject to a penalty payment of \$25,810, about the same maximum penalty that can be assessed per day of violation under sections 113(b) and (d) in the Clean Air Act.

B. Role of Authorized Account Representative

Comment: EPA received several comments on two options, presented in

the proposal, concerning the role of the authorized account representative (who also is, for any affected unit, the designated representative) in deducting allowances from other unit accounts. Option 1 would prescribe the unit accounts for, and order of, such deductions but allow the authorized account representative, before the allowance transfer deadline, to tell EPA not to make any deductions from other unit accounts. Option 2 would allow the authorized account representative to specify, within 15 days of receiving notice from the Agency of a unit's failure to hold sufficient allowances, the serial numbers of the allowances to deduct and the compliance subaccounts from which to deduct those allowances. All of the commenters supported Option 2. One commenter argued that Option 2 is consistent with section 403(d)(2) in the Act which states that owners and operators must "act through a designated representative" and language in Parts 72 and 73 of the current regulations that authorize designated representatives to specify by serial number the allowances deducted from compliance. Several commenters also noted Option 2 was preferable because it would avoid potential allowance surrender issues that could arise where units at a source are jointly owned.

Response: In light of the comments received, the Agency has chosen Option 2 over Option 1 for the final rule. As pointed out in the comments, Option 2 will provide owners and operators with more flexibility because the authorized account representative can specify any unused allowance for deduction, as long as a unit at the same source holds the allowance. This flexibility makes it unnecessary for owners and operators to renegotiate their allowance agreements in order to take into account the Agency-mandated pattern in Option 1 for allowance deduction from other unit accounts. EPA recognizes that Option 2 may delay its end-of-year compliance determinations and the unfreezing of allowance accounts. 63 FR 41362. However, EPA believes the benefits of Option 2, highlighted by the commenters, outweigh the drawbacks of such a delay. In adopting Option 2, EPA made a few, minor word changes to the proposed revisions of §§ 72.2 and 73.35 in order to make the rule easier to understand.

C. Effective Date of Rule Revisions

Comment: One commenter, in a late comment, urged the Agency to finalize the rule in a manner that would allow the compliance determination revisions to apply to the 1998 compliance year.

Response: Today's rule will apply to all compliance years for which the excess emissions penalty payment deadline under § 77.6(a)(3) (i.e., July 1) is on or after the effective date of today's rule. Section 77.6(a)(3) requires submission of the payment within 30 days of notice by the Administrator of completion of its process for determining end-of-year compliance, but not later than July 1. EPA anticipates that July 1 will be the applicable deadline for the 1998 compliance year. EPA believes that the penalty payment deadline should be the cut-off date because that deadline is the date on which the designated representative must determine, and notify EPA of, the specific number of tons of excess emissions at a unit. Today's rule can change the amount of a unit's excess emissions and so should apply only if it is effective before the July 1 deadline for determining excess emissions for the compliance year.

EPA considered applying today's rule revisions only to those compliance years for which the annual compliance certification and excess emissions offset plan deadline (60 days after the end of the year) is on or after the effective date of the revisions. This approach, however, would prevent use of the new provisions for the 1998 compliance year and would serve no useful purpose. Neither the annual compliance certification nor the excess emissions offset plan requires the designated representative to state the specific number of tons of excess emissions at a unit. Instead, the designated representative must indicate whether a unit held enough allowances in its compliance subaccount and, if not, whether EPA should deduct immediately (i.e., as soon as EPA completes its determination of end-of-year compliance) allowances to offset the unit's excess emissions. EPA must deduct offsetting allowances immediately unless the designated representative makes the unusual showing that the deduction would jeopardize electric reliability. See 40 CFR 72.90(c)(1) and 77.3(d). Since any unit having excess emissions under the current rule will still have excess emissions under today's rule, the required information in the annual compliance certification and offset plan is the same under either rule. Therefore, it is unnecessary to limit the application of the revisions to only compliance years for which the annual compliance certification and excess emissions offset plan deadline (60 days after the end of the year) is on or after the effective date of the revisions. Today's rule will

⁵ As of December 1998, the market price of an allowance was about \$190, an amount which, if it had been the average allowance price for 1998, would have resulted in 93 percent of a unit's needed allowances to be deducted from other unit accounts.

instead apply to all compliance years for which the July 1 excess emissions penalty payment deadline is on or after the effective date of the revisions. The 1998 compliance year will therefore be the first year to which the rule will apply.

D. Impacts of Rule Revisions on Acid Rain Permits

EPA designed today's revisions to become effective without changing the contents of existing acid rain permits and the State regulations for issuing acid rain permits. With the exception of changes in the definitions of "compliance subaccount" and "current year subaccount," all of today's revisions are in 40 CFR part 73. As explained in the preamble to the proposed rule (63 FR 41364), it is unnecessary for State permitting authorities to revise the acid rain permits they have issued or regulations they have adopted to reflect today's final revisions to 40 CFR part 73.

Similarly, the revisions can go into effect without State permitting authorities revising acid rain permits or regulations to reflect the revised definitions of "compliance subaccount" and "current year subaccount" in 40 CFR part 72. Even if a State issued an acid rain permit before today's revision of the definitions become effective, the Agency will apply the final revised definitions, along with the revisions in 40 CFR part 73, to the units covered by the permit. The Agency will use the revised definitions in determining end-of-year compliance for all calendar years for which the July 1 excess emissions penalty payment deadline is on or after the effective date of the revised definitions.

Moreover, the revised definitions will not affect the permitting activities of State permitting authorities under 40 CFR part 72. Instead, the revised definitions affect EPA's operation of the Allowance Tracking System under 40 CFR part 73.

While EPA will apply the revised definitions in § 72.2, State permitting authorities should revise their own regulations to reflect the new definitions. This will avoid any potential confusion on the part of regulated entities and the public as to how EPA determines end-of-year compliance.

V. Administrative Requirements

A. Docket

A docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a

dynamic file since EPA and participants add material throughout the rulemaking development. The docketing system allows members of the public and industries involved to identify and locate documents readily so that they can effectively participate in the rulemaking process. Along with the preambles of the proposed and final rule (which include EPA responses to significant comments), the contents of the docket will serve as the record in case of judicial review to the extent provided in section 307(d)(7)(A) of the Act.

B. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that today's rule is not a "significant regulatory action."

C. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or unless EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a new mandate on State, local or tribal governments. It modifies an existing mandate in a way that imposes no additional duties and no additional costs on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or unless EPA consults with those governments. If EPA complies by consulting, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect, or impose any substantial direct compliance costs on, the communities of Indian tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for

federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, before promulgating a proposed or final rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA must identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because today's rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

Today's final revisions to parts 72 and 73 will potentially reduce the burden on regulated entities by providing more flexible allowance holding requirements. The revisions will not otherwise have any significant impact on State, local, and tribal governments.

F. Paperwork Reduction Act

Today's final revisions to parts 72 and 73 will not impose any new information

collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). OMB has previously approved the relevant information collection requirements contained in parts 72 and 73 under the provisions of the Paperwork Reduction Act and has assigned OMB control number 2060-0258. 58 FR 3590, 3650 (1993).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the previously approved ICR may be obtained from the Director, Regulatory Information Division; EPA; 401 M St. SW (mail code 2137); Washington, DC 20460 or by calling (202) 564-2740. Include the ICR and/or OMB number in any correspondence.

G. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

As discussed above, today's final revisions will reduce the burden on regulated entities by adding flexibility to the regulations. For this reason, EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

H. Applicability of Executive Order 13045: Children's Health Protection

Executive Order 13045 (62 FR 19885, April 29, 1997) applies to any rule if EPA determines (1) that the rule is economically significant as defined under Executive Order 12866, and (2) that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria,

EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final action is not subject to Executive Order 13045, because the action is not economically significant as defined by Executive Order 12866 and does not address an environmental health or safety risk having a disproportionate effect on children.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d)(15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, or business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's final rule does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the NTTAA.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after publication in the **Federal Register**.

List of Subjects in 40 CFR Parts 72 and 73

Environmental protection, Acid rain, Administrative practice and procedure,

Air pollution control, Compliance plans, Electric utilities, Penalties, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: May 5, 1999.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by:

a. Removing from the definition of "Compliance subaccount" the words "by the unit" whenever they appear and the word "unit's" after the words "meeting the"; and

b. Removing from the definition of "Current year subaccount" the words "by the unit" and replacing the word "its" with the word "the".

3. Section 72.40 is amended by adding to paragraph (a)(1) the words " , or in the compliance subaccount of another affected unit at the same source to the extent provided in § 73.35(b)(3)," after the words "under § 73.34(c) of this chapter)".

PART 73—[AMENDED]

4. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

5. Section 73.35 is amended by revising paragraph (a)(2) and adding paragraph (b)(3) to read as follows:

§ 73.35 Compliance.

(a) * * *

(2) Such allowance is:

(i) Recorded in the unit's compliance subaccount; or

(ii) Transferred to the unit's compliance subaccount, with the transfer submitted correctly pursuant to subpart D of this part for recordation in the compliance subaccount for the unit by not later than the allowance transfer deadline in the calendar year following the year for which compliance is being established; or

(iii) Held in the compliance subaccount of another affected unit at the same source in accordance with paragraph (b)(3) of this section.

(b) * * *

(3)(i) If, after the Administrator completes the deductions under paragraph (b)(2) of this section for all affected units at the same source, a unit would otherwise have excess emissions

and one or more other affected units at the source would otherwise have unused allowances in their compliance subaccounts and available for such other units under paragraph (a)(1) and (a)(2)(i) and (ii) of this section for the year for which compliance is being established, the Administrator will notify in writing the authorized account representative. The Administrator will state that the authorized account representative may specify in writing which of such allowances to deduct up to the amount calculated as follows, in order to reduce the tons of excess emissions otherwise at the unit:

Maximum deduction from other units = $0.95 \times \text{Excess emissions}$ if no deduction from other units

Where:

"Maximum deduction from other units" is the maximum number of allowances that may be deducted for the year for which compliance is being established, for the unit otherwise having excess emissions, from the compliance subaccounts of other units at the same source, rounded to the nearest allowance.

"Excess emissions if no deduction from other units" is the tons of excess emissions that the unit would otherwise have if no allowances were deducted for the unit from other units under this paragraph (b)(3)(i) or paragraph (b)(3)(ii) of this section.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the amount calculated results in less than 10 tons of excess emissions, the maximum deduction from other units shall be adjusted so that 10 tons of excess emissions, or the tons of excess emissions that would result if no allowances could be deducted from other units, whichever is less, remain for the unit.

(iii) If the authorized account representative submits within 15 days of receipt of a notification under paragraph (b)(3)(i) of this section a written request specifying allowances to deduct in accordance with paragraphs (b)(3)(i) and (ii) of this section, the Administrator will deduct such allowances, and reduce the tons of excess emissions otherwise at the unit by an equal amount, up to the amount calculated under paragraphs (b)(3)(i) and (ii) of this section.

* * * * *

[FR Doc. 99-12007 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300773A; FRL-6077-3]

RIN 2070-AB78

Diphenylamine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of diphenylamine in or on pears. IR-4 requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 13, 1999. Objections and requests for hearings must be received by EPA on or before July 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300773A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300773A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300773A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of

objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Office of the Director, (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-308-9357, cimino.pat@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 1999 (64 FR 8273) (FRL-6052-2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170) announcing a proposed regulation to establish a time-limited tolerance for residues of diphenylamine on pears. This notice was initiated by the Agency and included a summary of the toxicological profile and safety findings of the Agency. There were no comments received in response to the notice of filing.

The proposed rule requested that 40 CFR 180.190 be amended by establishing a tolerance for residues of the plant growth regulator diphenylamine, in or on pears at 10 part per million (ppm).

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a

complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diphenylamine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of diphenylamine on pears at 10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diphenylamine are discussed in this unit.

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary exposure (1 day) a risk assessment is not required since no appropriate toxicity endpoint or no-observed adverse effect level (NOAEL) could be identified from the available data. No developmental toxicity was observed at any dose level in the test animals. The highest doses tested were 100 milligrams/kilogram/day (mg/kg/day) in rats and 300 (mg/kg/day) in rabbits.

2. *Short- and intermediate-term toxicity.* Short- and intermediate-term risk assessments take into account exposure from indoor and outdoor residential exposure plus chronic dietary food and water (considered to be a background exposure level). This risk assessment is not required because there are no indoor or residential uses for this pesticide. Risk from chronic dietary food and water toxicity endpoints and exposure is taken into account under the chronic exposure and risk section below.

3. *Chronic toxicity.* EPA has established the RfD for diphenylamine at 0.03 (mg/kg/day). This Reference Dose (RfD) is based on a chronic dog study with a lowest observed adverse effect level (LOAEL) of 10 mg/kg/day. An Uncertainty Factor (UF) of 100 was

used to account for both the interspecies extrapolation and the intraspecies variability. An additional UF of three was recommended to account for the lack of a NOAEL and the Committee's concern with respect to potential methemoglobinemia which was not tested in this study.

It should be noted that although the LOAEL was established at 10 mg/kg/day, in both males and females (based on hematological and clinical chemistry changes, and clinical signs of toxicity), because of the lack of information on methemoglobinemia the LOAEL could not be verified and was considered tentative until this issue is addressed. The Agency has required that a subchronic study of sufficient duration be conducted in dogs to investigate this possible methemoglobinemic effect to accurately define the NOAEL in the critical study. This study has been initiated by the registrant.

This chemical has been reviewed by the FAO/WHO joint committee meeting on pesticide residue (JMPR) and an acceptable daily intake (ADI) of 0.02 mg/kg/day has been established by that Committee.

4. *Carcinogenicity.* The Agency classified diphenylamine as "not likely" in reference to carcinogenicity in April, 1997. This classification was based on the lack of evidence for carcinogenicity in the two acceptable carcinogenicity studies in either male or female CD-1 mice or Sprague-Dawley rats.

A nitrosamine impurity, diphenylnitrosamine, occurs in diphenylamine technical product. Diphenylnitrosamine is a quantified carcinogen. The technical product producer, Elf Atochem, has submitted nitrosamine data which confirms that the maximum total nitrosamine contamination expected for the diphenylamine technical would be 10 ppm. The Agency concluded that residue data depicting nitrosamine levels in pome fruits (apples and pears) would not be required, but that a nitrosamine level of 0.0001 ppm in apples and pears should be used in dietary risk assessments for diphenylamine.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.190) for the residues of diphenylamine, in or on a variety of raw agricultural commodities. These include apples, and cattle, goat, horse and sheep meat. Risk assessments were conducted by EPA to assess dietary exposures from diphenylamine as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on

the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. An acute risk assessment is not required since no appropriate endpoint or NOAEL could be identified from the available data. No developmental toxicity was seen at any dose level in the test animals. The highest doses tested were 100 mg/kg/day in rats and 300 mg/kg/day in rabbits.

ii. *Chronic exposure and risk.* A Dietary Exposure Evaluation Model (DEEM) chronic exposure analysis was performed by the Agency using Anticipated Residue Concentration (ARC) for apples and Theoretical Maximum Residue Concentration (TMRC) for pears, meat and milk. Percent crop treated estimates were not used for the chronic risk assessment. Tolerances are currently established for apples at 10 ppm and for meat and milk at 0 ppm. The Agency has recommended that the following tolerances be established in the 1998 Registration Eligibility Document (RED) for diphenylamine: wet apple pomace (an animal feed item) at 30.0 ppm, milk at 0.01 ppm, meat except liver at 0.01 ppm, and meat liver at 0.10 ppm. The recommended tolerances are supported by data and the Agency, on its own initiative, is in the process of establishing these tolerances.

The Agency determined that 10 ppm is appropriate for diphenylamine residues in pears for a time-limited tolerance based on bridging data from the apple residue studies to pears. The use patterns are identical for apples and pears and the fruit are substantially similar. The TMRC level for apples, 10 ppm, was determined from field testing at maximum label rates and sampling immediately after treatment. The wet apple pomace residue value, 30 ppm, was derived from apple processing data

using the highest average field trial residue value, 5.86 ppm, multiplied by the average concentration factor, 4.7x, observed in wet apple pomace. The meat and milk TMRC values recommended in the 1998 RED for diphenylamine were obtained from a ruminant feeding study which indicates that at 1x, 3x and 10x feeding rates (30 ppm, 90 ppm and 300 ppm diphenylamine) diphenylamine was detected in one or more meat, meat by-product or milk fractions.

The ARC for apples used in the DEEM chronic exposure analysis is 0.562 ppm and was obtained from USDA's Pesticide Data Program (PDP). The PDP program was designed by EPA and USDA to provide EPA with market basket type residue values for refined risk assessments. The PDP samples crop commodities from grocery store distribution centers for pesticide residue analysis in order to better determine the residues which occur in foods at the time consumers purchase them. The eighteenfold drop in tolerance values between the TMRC derived apple tolerance of 10 ppm compared to the ARC/PDP derived tolerance of 0.562 ppm represents the difference in tolerance levels at the "farm gate" (worst case tolerance levels measured immediately after harvest or in the case of diphenylamine, immediately after treatment) versus the tolerance level which occurs close to actual purchase time.

The proposed pear tolerance at the TMRC of 10 ppm, was used in the DEEM chronic exposure analysis to calculate the dietary contribution from pears. The addition of pears to the apple ARC and RED recommended tolerances for meat, milk and wet apple pomace represents 3.9% of the RfD for the general U.S. population, and 31.3% of the RfD for the most sensitive sub-population, non-nursing infants (< 1 year old). Diphenylamine is classified as "not likely" to be carcinogenic to humans via the relevant routes of exposure.

A dietary risk assessment for diphenylnitrosamine, an impurity in technical product diphenylamine, was calculated using the nitrosamine residue level of 0.0002 ppm (0.0001 ppm each for apples and pears). The Q* for diphenylnitrosamine is 4.9×10^{-3} as reported on IRIS. The DEEM chronic exposure analysis calculated an ARC for the total U.S. Population of 0.001155 mg/kg/day.

To calculate the cancer risk for the diphenylnitrosamine, multiply the ARC (0.001155 mg/kg/day) by 2.0×10^{-5} (because diphenylnitrosamine dietary contribution from apples and pears is 20

ppm or 20/1,000,000). Divide this result by 70 years to correct the average daily dose to a lifetime average daily dose. Finally, multiply this result by the Q* of 0.0049 mg/kg/day and the cancer risk is calculated to be 1.6×10^{-12} .

$$0.001155 \text{ mg/kg/day} \times 2.0 \times 10^{-5} = 2.3 \times 10^{-8}$$

$$2.3 \times 10^{-8} / 70 \text{ years} = 3.3 \times 10^{-10}$$

$$3.3 \times 10^{-10} \times 4.9 \times 10^{-3} = 1.6 \times 10^{-12} \text{ mg/kg/day}$$

This value is well below the Agency's level of concern for nitrosamine in the diet.

2. *From drinking water.* Dietary risk from drinking water is assumed to be negligible because negligible exposure results from the pesticidal uses. The use pattern is limited to pome fruit drenches in fruit packing houses and there are no detections in the Agency's Pesticides in Ground water Database or the U.S. EPA's "STORET" database.

3. *From non-dietary exposure.*

Diphenylamine is not currently registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether diphenylamine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diphenylamine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diphenylamine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* An acute dietary risk assessment was not conducted since no appropriate endpoint or NOAEL could be identified from the available data. No developmental toxicity was observed at

any dose level in the test animals. The highest doses tested were 100 mg/kg/day in rats and 300 mg/kg/day in rabbits.

2. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diphenylamine from food will utilize 3.9% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants and is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account indoor and outdoor residential exposure plus chronic dietary food and water (considered to be a background exposure level). A short- and intermediate-term risk assessment is not required as there are no indoor or outdoor residential uses for this pesticide and chronic exposure is accounted for above.

4. *Aggregate cancer risk for U.S. population.* Diphenylamine is classified as "not likely" to be carcinogenic to humans via the relevant routes of exposure.

A dietary risk assessment for diphenylnitrosamine, the impurity in diphenylamine, was calculated using the nitrosamine residue level of 0.0001 ppm each for apples and pears. The Q^* for diphenylnitrosamine is 4.9×10^{-3} as reported on IRIS. The chronic DEEM analysis calculated an ARC for the total U.S. population of 0.001155 mg/kg/day. Using these values, the cancer risk is calculated to be 1.6×10^{-12} . This value is well below the Agency's level of concern for nitrosamine in the diet.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diphenylamine residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of diphenylamine, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide

information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a developmental toxicity study, pregnant female Sprague-Dawley rats (25/group) received diphenylamine (99.9%) in corn oil by oral gavage at dose levels of 0, 10, 50, or 100 mg/kg/day from gestation day 6 through gestation day 15 inclusive; dams were sacrificed on gestation day 20. None of the rats died during the study. Maternal toxicity was evidenced by increased splenic weights, enlarged spleens and blackish-purple colored spleen in the dams at 100 mg/kg/day. The maternal toxicity NOAEL was 50 mg/kg/day and the LOAEL was 100 mg/kg/day. No developmental toxicity was seen at any dose level. The developmental toxicity NOAEL was equal to or greater than 100 mg/kg/day the highest dose tested (HDT); a LOAEL was not established.

In a developmental toxicity study, pregnant New Zealand White rabbits received either 0, 33, 100, or 300 mg/kg/day diphenylamine (99.9%) suspended in 1% methyl cellulose by oral gavage from gestation day 7 through 19, inclusive. Animals came from 3 sources (vendors). Maternal toxicity was noted at 300 mg/kg as decreases in food consumption and associated initial reductions in body weight gain. The maternal toxicity NOAEL was 100 mg/kg/day and the LOAEL was 300 mg/kg/day based on decreased body weight gains and food consumption early during the treatment period. No developmental toxicity was noted at any

dose level. The developmental toxicity NOAEL was equal to or greater than 300 mg/kg/day (HDT); a LOAEL was not established.

iii. *Reproductive toxicity study.* In a 2-generation reproductive toxicity study, Sprague-Dawley rats (28 per sex/group) received diphenylamine (99.8%) in the diet at dose levels of 0, 500, 1,500, or 5,000 ppm (0, 40, 115, or 399 mg/kg/day for F₀ males and 0, 46, 131, or 448 mg/kg/day for F₀ females, respectively, during premating). Compound-related systemic toxicity was observed in a dose related manner among both sexes and generations at all dose levels. The systemic toxicity NOAEL was less than 500 ppm (40 mg/kg/day in males and 46 mg/kg/day in females) and the LOAEL was less than or equal to 500 ppm based on gross pathological findings in the kidney, liver, and spleen.

Developmental toxicity was observed at 1,500 and 5,000 ppm, as evidenced by significantly decreased body weight for F₁ pups at 5,000 ppm throughout lactation (11% to 25 % less than control), for F₂ pups at 5,000 ppm from lactation day (LD) 4 through LD 21 (10% to 29% less than control), and for F₂ pups at 1,500 ppm on LD 14 (10%) and LD 21 (12%). The developmental toxicity NOAEL was 500 ppm (46 mg/kg/day for maternal animals) and the LOAEL was 1,500 ppm (131 mg/kg/day for maternal animals) based on decreased F₂ pup body weight in late lactation. In a two-generation reproductive toxicity study, Sprague-Dawley rats (28 per sex/group) received diphenylamine (99.8%) in the diet at dose levels of 0, 500, 1,500, or 5,000 ppm (0, 40, 115, or 399 mg/kg/day for F₀ males and 0, 46, 131, or 448 mg/kg/day for F₀ females, respectively, during premating). Compound-related systemic toxicity was observed in a dose related manner among both sexes and generations at all dose levels. The systemic toxicity NOAEL was less than 500 ppm (40 mg/kg/day in males and 46 mg/kg/day in females) and the LOAEL was less than or equal to 500 ppm based on gross pathological findings in the kidney, liver, and spleen. Developmental toxicity was observed at 1,500 and 5,000 ppm, as evidenced by significantly decreased body weight for F₁ pups at 5,000 ppm throughout lactation (11% to 25 % less than control), for F₂ pups at 5,000 ppm from lactation day (LD) 4 through LD 21 (10% to 29% less than control), and for F₂ pups at 1,500 ppm on LD 14 (10%) and LD 21 (12%). The developmental toxicity NOAEL was 500 ppm (46 mg/kg/day for maternal animals) and the LOAEL was 1,500 ppm (131 mg/kg/day

for maternal animals) based on decreased F₂ pup body weight in late lactation. Reproductive toxicity was noted as smaller litter sizes at birth (significant for the F₂ litters) in both generations at 5,000 ppm. The reproductive toxicity NOAEL was 1,500 ppm (131 mg/kg/day for maternal animals) and the LOAEL was 5,000 ppm (448 mg/kg/day for maternal animals), based upon decreased litter size in both generations.

iv. *Pre- and post-natal sensitivity.* For purposes of assessing the pre- and post-natal toxicity of diphenylamine, EPA has evaluated two developmental and one reproduction study. Based on current toxicological data requirements, the data base for diphenylamine, relative to pre- and post-natal toxicity is complete. However, as EPA fully implements the requirements of FQPA, additional data related to the special sensitivity of infants and children may be required.

The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to diphenylamine. The reproduction study demonstrated that the offspring were less sensitive than the adults and there was no developmental toxicity observed in either the rat or rabbit developmental studies at any dose tested.

v. *Conclusion.* There is a complete toxicity data base for diphenylamine and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* An acute dietary risk assessment was not conducted since no appropriate endpoint or NOAEL could be identified from the available data. No developmental toxicity was observed at any dose level in the test animals. The highest doses tested were 100 mg/kg/day in rats and 300 mg/kg/day in rabbits.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diphenylamine from food will utilize 31.3 percent of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Exposure is from food only as drinking water exposure is considered negligible and there are no residential uses and consequently no exposure from non-dietary, non-occupational uses of this pesticide.

4. *Short- or intermediate-term risk.* Short- or intermediate-term non-dietary, non-occupational exposure scenarios do not exist for diphenylamine and a short-

or intermediate-term aggregate risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to diphenylamine residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The qualitative nature of the residue in plants and livestock is adequately understood based on acceptable apple, ruminant and poultry metabolism studies. The Agency has concluded that the residue of concern in plants and livestock is diphenylamine per se.

B. Analytical Enforcement Methodology

The Food and Drug Administration (FDA) PESTDATA database dated 1/94 (Pam Vol. I, Appendix I) indicates that diphenylamine is completely recovered using FDA Multiresidue Protocol D (PAM I Section 232.4). In addition, a gas chromatography (GC)/mass selective detection (MSD) method is available for the quantitation of diphenylamine residues in apples which should be bridgeable to pears.

Adequate enforcement methodology (example - gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5229.

C. Magnitude of Residues

For the purposes of this time-limited tolerance, apple data have been used to estimate the magnitude of residues on pears. The use patterns for apples and pears are identical and the fruit types are substantially similar. Adequate magnitude of the residue data are available to support the use on apples. Acceptable residue data depicting diphenylamine residues in apples following a single posttreatment application at the maximum use rate have been submitted, and indicate that the existing 10 ppm tolerance for diphenylamine residues in apples is also appropriate for pears.

D. International Residue Limits

There are no international residue limits established for diphenylamine on pears.

E. Rotational Crop Restrictions

Rotational crop restrictions do not apply for two reasons: (1) Diphenylamine is used indoors only in fruit packing houses as a postharvest drench treatment to control scald; and (2) pears are a perennial crop and are not subject to rotational crop restrictions.

IV. Conclusion

Numerous residues of diphenylamine have been detected on pears, a use which is not registered and does not have an established tolerance, by the United States Department of Agriculture's (USDA) Pesticide Data Program (PDP) in both domestic and foreign pears due to inadvertent transfer of diphenylamine residues from apples to pears during packing. Public reporting of PDP food residue monitoring occurred earlier this year and in order to prevent public concern regarding residues of diphenylamine in pears the Agency assessed the aggregate risk from exposure on pears, found it acceptable, and proposed to establish a time-limited tolerance for this use on February 19, 1999. No comments were received during the 15-day comment period.

The U.S. pear industry has asked the IR-4 program and pesticide registrants to generate the reports and data required to support the establishment of a tolerance and registration of diphenylamine on pears. The data generation have been initiated and the Agency expects these data to be submitted in 2 years. In the meantime, the Agency has assessed the risk from this use on pears based on bridging data from apples to pears and found that a reasonable certainty of no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information. Therefore, a time-limited tolerance is established for residues of diphenylamine in pears at 10 ppm, the same level as currently established on apples, which will expire on December 1, 2001.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some

modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 12, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking

any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300773A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the

Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal

governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.190 is revised to read as follows:

§ 180.190 Diphenylamine; tolerances for residues.

(a) *General.* Tolerances for the residues of the plant growth regulator diphenylamine are established as follows:

Commodity	Parts per million
Apple, preharvest or postharvest, including wraps	10
Cattle, meat	0
Goat, meat	0
Horse, meat	0
Sheep, meat	0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* A time-limited tolerance is established for the indirect or inadvertent residues of diphenylamine in or on the following commodity:

Commodity	Parts per million	Expiration/Revocation Date
Pears	10	12/1/01

[FR Doc. 99-12135 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-F

Proposed Rules

Federal Register

Vol. 64, No. 92

Thursday, May 13, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209-AA00

Proposed Revisions to the Public Financial Disclosure Gifts Waiver Provision

AGENCY: Office of Government Ethics.

ACTION: Proposed rule amendments.

SUMMARY: The Office of Government Ethics (OGE) is proposing to amend the regulation which authorizes the Director of OGE to grant a waiver of certain gift disclosure requirements for filers of the public financial disclosure report form, SF 278. The proposed amendments would permit the grant of a waiver, in appropriate cases, if the basis of the relationship between the grantor and grantee of a gift and the motivation behind a gift are personal. The proposed changes also would clarify that the cover letter requesting a waiver will be publicly available if the Director of OGE approves the waiver request, either in whole or in part. Additionally, the proposed amendments would expressly require that a description of the gift and its value be included in a waiver request. Finally, the proposed changes would explicitly require that when a gift has multiple donors, the information required to be in a waiver request pertaining to the donor must include the necessary information for each donor.

DATES: Comments are invited and must be received on or before July 12, 1999.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Attention: Judy H. Mann. Comments may also be sent electronically to OGE's Internet E-mail address: usoge@oge.gov. For E-mail messages, the subject line should include the following reference—"Proposed revisions to the public financial disclosure gifts waiver provision."

FOR FURTHER INFORMATION CONTACT: Judy H. Mann, Attorney-Advisor, or Norman

B. Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is proposing to amend the executive branch regulation which requires the disclosure of certain gifts received by the filers of the Standard Form (SF) 278 Public Financial Disclosure Report forms, their spouses, and their dependent children. Title I of the Ethics in Government Act of 1978 (the Ethics Act), 5 U.S.C. appendix, title I, sets forth the requirements which govern the reporting of gifts on the public financial disclosure reports (SF 278). Specifically, 5 U.S.C. app., section 102(a)(2) requires the reporting of gifts on public financial disclosure report forms but also includes, at paragraph (a)(2)(C), authority for granting a waiver which permits the nondisclosure of certain gifts on the SF 278. The Office of Government Ethics has issued regulations at 5 CFR 2634.304 that establish guidelines clarifying the gift reporting requirements set forth in the Ethics Act. Section 2634.304(f) includes the procedures for requesting a waiver of reporting for executive branch filers and the factors which the Director of OGE considers in determining whether to issue a waiver.

Under 5 CFR 2634.304, a person who files an SF 278 is required to report certain gifts that he, his spouse, or his dependent child receives. Section 2634.304 permits a filer not to disclose certain gifts if the filer receives a waiver. The filer must submit a written request for a waiver through his agency to the Director of the Office of Government Ethics, who determines whether to issue the waiver. If the OGE Director issues the waiver, the filer is not required to disclose the gift or gifts for which he receives the waiver on his SF 278, nor is he required to aggregate those gifts for reporting purposes. However, the request cover letter is publicly available.

Currently, in order to grant a waiver under § 2634.304(f)(1), the Director must determine that both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are entirely personal and that no countervailing public purpose requires public disclosure of the nature, source, and value of the gift. One of the proposed amendments would address

the requirement that the basis of the relationship between the grantor and the grantee and the motivation behind the gift be "entirely personal." The experience of OGE over the years has demonstrated that in some situations, a filer has a predominantly social relationship with a grantor of a gift, but has met the grantor through a business relationship, often in connection with a spouse's business activities. Requests for waivers in these circumstances most often occur when the filer receives a gift for a wedding or other similar social occasion. However, these circumstances might be construed as not "entirely personal" under § 2634.304(f)(1)(i). The proposed rule would permit the Director to grant a waiver of reporting if he determines that the basis of the relationship between the grantor and the grantee and the motivation behind the gift are "personal," rather than "entirely personal," provided that no countervailing public purpose requires public reporting. Thus, in the situation described above, the Director could grant a waiver because the relationship between the grantor and grantee and the motivation behind the gift may be construed as personal. The proposed rule would give OGE some flexibility in granting waivers in such appropriate cases.

In the legislative history of the Ethics Act, the Senate Committee on Governmental Affairs described its intention that waivers be used infrequently. S. Rep. No. 95-170 at 116 (1977). The proposed rule would remain consistent with the Committee's intent. The Office of Government Ethics has received a small number of waiver requests each year and does not expect that there will be an overall increase in the number of requests received, or much of an increase in waivers granted, as a result of the proposed rule.

Under § 2634.304(f)(2), members of the public can access the cover letter requesting a waiver if the Director of OGE approves the waiver request. Public availability of the cover letter is subject to the public disclosure requirements in 5 CFR 2634.603. The Office of Government Ethics proposes to amend § 2634.304(f)(2) by adding language to clarify that the cover letter of a waiver request will be publicly available when the Director of OGE has granted either a partial or complete approval of the waiver request. In such

cases, an item or items contained in the waiver request for which the waiver was granted will not appear on the SF 278. Any item or items contained in the request for which the Director of OGE did not grant a waiver will be listed on the SF 278. If the Director of OGE denies the complete request, the item or items for which the waiver was requested will be contained in the SF 278, and the cover letter requesting the waiver will not be publicly available. This proposed amendment does not alter OGE's current practice regarding the disclosure of the cover letter requesting a waiver; it simply will clarify that the public can access the cover letter of waiver requests for which the Director of OGE has granted either full or partial approval.

The proposed rule would also amend § 2634.304(f)(3) to expressly require a filer to describe the gift for which he is seeking a waiver. Section 2634.304(f)(3) sets forth specific requirements for the contents of a waiver request by the filer, as submitted through his agency to OGE. The filer must include in a waiver request the identity and occupation of the donor, in addition to a statement concerning the relationship between the donor and the filer, as described above. The request also must contain a statement concerning any involvement of the donor with the filer's agency. The current regulation does not expressly require the filer to describe the gift or list its value in the waiver request. Although most filers do include a description of the gift and its value in their waiver requests, in order to eliminate any ambiguity concerning whether this basic information is required, we are proposing to add a new paragraph (f)(3)(ii)(D) to explicitly require that the filer include both a description of the gift and its value in the waiver request. The proposed rule would be consistent with the general requirement under § 2634.304 that an SF 278 filer report a description, as well as the value, of certain gifts. Moreover, knowing the nature and value of the gift will assist OGE in determining whether there is a countervailing public purpose requiring public disclosure.

Under § 2634.304(f)(3), a filer who requests a waiver of reporting certain gifts must provide specified information about the donor of each gift for which a waiver is requested. Included in the proposed revisions to § 2634.304(f)(3) is a new paragraph (f)(3)(iii), which would explicitly require that when a gift for which a waiver is requested has more than one donor, a filer must provide the required information with respect to each donor of the gift. This is not a new requirement. The proposed rule merely serves as a technical clarification of an

existing requirement under the current rule.

The proposed revisions to § 2634.304(f)(3) also include a restructuring of that provision and the correction of a typographical error.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before July 12, 1999. The Office of Government Ethics will review all comments received and consider any modifications to this rule as proposed which appear warranted before adopting the final rule on this matter.

Executive Order 12866

In promulgating this proposed rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch departments and agencies and certain of their employees who file SF 278 reports.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to these proposed amendments because they do not contain information collection requirements that require approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: May 6, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend part 2634 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.304 is amended by:
- a. Revising paragraph (f)(1)(i);
 - b. Adding an Example after paragraph (f)(1)(ii);
 - c. Revising paragraph (f)(2); and
 - d. Revising paragraph (f)(3).

The revisions and addition read as follows:

§ 2634.304 Gifts and reimbursements.

* * * * *

(f) * * * (1) * * *

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are personal; and

(ii) * * *

Example to paragraph (f)(1). i. The Secretary of Education and her spouse receive the following two wedding gifts:

A. Gift 1—A crystal decanter valued at \$285 from the Secretary's former college roommate and lifelong friend, who is a real estate broker in Wyoming.

B. Gift 2—A gift of a print valued at \$300 from a business partner of the spouse, who owns a catering company.

ii. Under these circumstances, the Director of OGE will consider a request for a waiver of reporting for each of these gifts.

(2) *Public disclosure of waiver request.* If approved in whole or in part, the cover letter requesting the waiver shall be subject to the public disclosure requirements in § 2634.603 of this part.

(3) *Procedure.* (i) A public filer seeking a waiver under this paragraph (f) shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section.

(ii) On an enclosure to the cover letter, the filer shall set forth:

(A) The identity and occupation of the donor;

(B) A statement that the relationship between the donor and the filer is personal in nature;

(C) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with

a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative; and

(D) A brief description of the gift and the value of the gift.

(iii) With respect to the information required in paragraph (f)(3)(ii) of this section, if a gift has more than one donor, the filer shall provide the necessary information for each donor.

[FR Doc. 99-12047 Filed 5-12-99; 8:45 am]

BILLING CODE 6345-01-U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA-99-02]

Milk in the Iowa Marketing Area; Notice of Reopening and Extension of Time for Filing Comments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and Extension of Time for Filing Comments.

SUMMARY: This document reopens and extends the time for filing comments on a proposed revision to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order.

DATES: Comments are now due on or before June 14, 1999.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456. Advance, unofficial copies may be faxed to (202) 690-0552 or e-mailed to OFB_FMMO_Comments@usda.gov. Reference should be made to the title of action and docket number. All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs offices during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357, e-mail address connie.brenner@usda.gov.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Proposed Rule: Issued April 14, 1999; published April 19, 1999 (64 FR 19071).

Notice is hereby given that the time for filing comments on the proposed revision of the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order is hereby reopened and extended. The comment period closed on April 26, 1999. Comments concerning the months of June, July, and August will now be accepted through June 14, 1999.

On the basis of the original request for revision and one comment filed in partial support of the proposed revision, USDA is reducing the supply plant shipping percentages by 10 percentage points for the months of April and May, and by 5 percentage points for the month of June. These revisions concerning supply plant shipping percentages are published separately in the **Federal Register**. A reduction of 10 percentage points for the months of April through August 1999 was requested by Beatrice Cheese, Inc. A comment, filed on behalf of Anderson-Erickson Dairy Company, argued that the milk supply situation in the Iowa market is too volatile at present to be able to determine whether the requested reduction in the pool supply plant shipping percentage for the months of June, July, and August is appropriate. Therefore, a decision on whether to revise the shipping percentage for the months of July and August and to further revise the shipping percentage for the month of June will be made after the close of the reopened comment period.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

Dated: May 7, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99-12145 Filed 5-12-99; 8:45 am]

BILLING CODE 3410-02-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM155; Notice No. 25-99-03-SC]

Special Conditions: Boeing Model 767-300 Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Boeing Model 767-300 series airplanes. These airplanes as modified by Am-Safe, Inc. will have novel and unusual design features associated with seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM-7), Docket No. NM155, 1601 Lind Avenue SW., Renton, Washington, 98055-4506; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM155. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2136; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications

received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM155." The postcard will be date stamped and returned to the commenter.

Background

On March 8, 1999, Am-Safe Inc. applied for a supplemental type certificate to install inflatable lapbelts for head injury protection on certain seats in Boeing Model 767-300 series airplanes. The Model 767-300 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive airbag, but in this case the airbag is integrated into the lapbelt, and deploys away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35" from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25-64 to 14 CFR part 25, a new standard that quantifies required head injury protection was created.

Title 14 CFR 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1,000 units be recorded, should contact with the cabin

interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified.

While Amendment 25-64 is not part of the Model 767-300 certification basis, it is recognized that the installation of inflatable lapbelts will eventually be proposed for airplanes that do include this requirement. In addition HIC is the only available quantifiable measure of head injury protection. Therefore, the FAA will require that a HIC of less than 1000 be demonstrated for occupants of seats incorporating the inflatable lapbelt.

Because § 25.562 and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide essentially equivalent protection for occupants of all stature, and second, it can provide significantly greater protection than would be expected with energy absorbing pads, for example. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the Federal Aviation Regulations (FAR). Conversely, airbags in general are active systems, and must be relied upon to activate properly when needed, as opposed to an energy absorbing pad or upper torso restraint that is passive, and always available. These potential advantages must be balanced against the potential problems in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to

inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. Am-Safe, Inc. must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the airbag should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25-ANM-18 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the airbag is considered a critical system; if inadvertent deployment could cause injuries to persons, the airbag should be considered an essential system. Finally, the airbag installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the airbag must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the airbag differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the airbag is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag. Since an actual crash is frequently composed of a series of impacts, this could render the airbag useless if a larger impact follows the initial impact. This situation does

not exist with energy absorbing pads or upper torso restraints, which tend to provide protection proportional to the severity of the impact. Therefore, the airbag installation should be such that the airbag will provide protection when it is required, and will not expend its protection when it is not needed. There is no requirement for the airbag to provide protection for multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are buckled.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the 5th percentile female to the 95th percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a larger range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of seats so equipped by children whether lap-held, in approved child safety seats, or occupying the seat directly. The installation needs to address the use of the inflatable lapbelt by children, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate much quicker than ten seconds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Am-Safe, Inc. must show that the Model 767-300 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A1NM are as follows: Amendments 25-1 through 25-45 with exceptions. The U.S. type certification basis for the Model 767-300 is established in accordance with 14 CFR 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. A1NM.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 767-300 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 767-300 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by 14 CFR 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 767-300 series airplanes will incorporate the following novel or unusual design features: Am-Safe, Inc. is proposing to install an inflatable lapbelt on certain seats of Boeing Model 767-300 series airplanes, in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similar to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system.

The FAR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of 14 CFR part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in 14 CFR 25.785, these special conditions are proposed for the Boeing Model 767-300 series airplanes equipped with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the airbag is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the airbag as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure

to high intensity electromagnetic fields could affect the activation system.

The following proposed special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the airbags is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Applicability

As discussed above, these special conditions are applicable to the Model 767-300 series airplanes. Should Am-Safe, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A1NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 767-300 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 767-300 series airplanes equipped with inflatable lapbelts modified by Am-Safe, Inc.

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-nine percentile male. The inflatable lapbelt must provide a consistent level of energy absorption throughout that range. The following situations must be considered:

a. The seat occupant is holding an infant,

b. The seat occupant is a child in a child restraint device,

c. The seat occupant is a child not using a child restraint device.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have buckled (thereby active) seatbelts.

3. The design must prevent the inflatable lapbelt from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. The seated occupant must not be injured as a result of the inflatable lapbelt deployment.

6. It must be shown that the inflatable lapbelt will not be a hazard to an occupant who is in the brace position when it deploys.

7. It must be shown that an inadvertent deployment, that could cause injury to a standing or sitting person, is improbable.

8. It must be shown that inadvertent deployment of the inflatable lapbelt, during the most critical part of the flight, will either not cause a hazard to the airplane or is extremely improbable.

9. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

10. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25-ANM-18 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a "critical system" if its deployment could have a hazardous effect on the airplane; otherwise it is considered an "essential" system.

11. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location.

12. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

13. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

14. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on May 3, 1999.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 99-12057 Filed 5-12-99; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192-0132b; FRL-6334-6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revisions, Mojave Desert Air Quality Management District and Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the revision of rules for the Mojave Desert Air Quality Management District (MDAQMD) and Tehama County Air Pollution Control District (TCAPCD). These rules concern emissions from orchard heaters and fuel burning equipment. The intended effect of this action is to bring the MDAQMD and TCAPCD SIPs up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period

on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by June 14, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 2020 "L" Street,
Sacramento, CA 95812.

Mojave Desert Air Quality Management
District, 15428 Civic Drive, Suite 200,
Victorville, CA 92392-2383.

Tehama County Air Pollution Control
District, 1760 Walnut Street, Red
Bluff, CA 96080.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1135.

SUPPLEMENTARY INFORMATION: The rules being proposed for rescission from the MDAQMD portion of the California SIP are included in San Bernardino County Air Pollution Control District Regulation VI, Orchard, Field or Citrus Grove Heaters, consisting of Rule 100, Definitions; Rule 101, Exceptions; Rule 102, Permits Required; Rule 103, Transfer; Rule 104, Standards for Granting Permits; Rule 109, Denial of Application; Rule 110, Appeals; Rule 120, Fees; Rule 130, Classification of Orchard Heaters; Rule 131, Class I Heaters Designated; Rule 132, Class II Heaters Designated; Rule 133, Identification of Heaters; Rule 134, Use of Incomplete Heaters Prohibited; Rule 135, Cleaning, Repairs; Rule 136, Authority to Classify Orchard Heaters; and Rule 137, Enforcement. These rules rescissions were adopted by the MDAQMD on June 24, 1996 and submitted by the California Air Resources Board to EPA on March 3, 1997.

The rule being proposed for rescission from the TCAPCD portion of the California SIP is TCAPCD Rule 4.13, Fuel Burning Equipment. This rule rescission was adopted by the TCAPCD on September 10, 1985 and submitted by

the California Air Resources Board to EPA on February 10, 1986.

For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 9, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99-11826 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 069-1069b; FRL-6340-4]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the state of Iowa on December 11, 1998, and January 29, 1999. These revisions consist of updates to Iowa Administrative Code, Chapters 20, 22, 23, 25, and 28. These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards and with respect to control of hazardous air pollutants. Approval of this SIP revision will make these rule revisions Federally enforceable.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 14, 1999.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: April 28, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99-11824 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN58-01-7283; FRL-6342-6]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Minnesota State Implementation Plan (SIP) for attainment and maintenance for the National Ambient Air Quality Standard (NAAQS) for Carbon Monoxide (CO). The revision pertains to the Minneapolis/St. Paul CO nonattainment area which includes the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright. The revision proposed for approval is the maintenance plan required pursuant to section 175A of the Clean Air Act (Act) for areas redesignated from nonattainment to attainment. Correspondingly, EPA is also proposing to approve the redesignation of the Minneapolis/St. Paul CO Area to attainment. EPA will not finalize this approval until the EPA approves the vehicle Inspection/Maintenance program for the Minneapolis/St. Paul area.

DATES: Comments on this proposed action must be received by June 14, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone

Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.)

A copy of these SIP revisions are available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT:

Michael G. Leslie, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680.

SUPPLEMENTARY INFORMATION:

I. Background

A. Minneapolis/St. Paul CO Nonattainment Area

On March 3, 1978 (43 FR 8902), pursuant to section 107 of the Act, EPA designated the Minneapolis/St. Paul area as nonattainment with respect to the CO NAAQS. The 1990 amendments to the Act authorized EPA to designate nonattainment areas and to classify them according to degree of severity. Therefore, on November 16, 1991 (56 FR 56694), the EPA designated the Minneapolis/St. Paul area moderate CO nonattainment with a design value of 11.4 parts per million (ppm). The Act defines the design value as the second highest ambient CO concentration averaged over two years. The Act establishes regulatory requirements for CO nonattainment areas based on the area's design value.

B. Redesignation Request

Under the Act, nonattainment areas can be redesignated to attainment if sufficient data are available to satisfy five criteria contained in section 107(d)(3) of the Act. These criteria include the requirements that the area has attained and can maintain the applicable NAAQS standards.

For the period from 1995 to 1996, the Minneapolis/St. Paul area ambient monitoring data shows no violations of the CO NAAQS. Therefore, pursuant to section 107(d) of the Act, the area became eligible for redesignation from nonattainment to attainment. On March 23, 1998, pursuant to section 107(d)(3) of the Act, the State of Minnesota requested the redesignation of the Minneapolis/St. Paul area to attainment with respect to the CO NAAQS. In order to ensure continued attainment of the CO standard, Minnesota also submitted a maintenance plan as required by section 175A of the Act. If the

redesignation is approved, the section 175A maintenance plan would become a federally enforceable part of the SIP for the Minneapolis/St. Paul area. On February 23, 1998, the State's 30 day public comment period closed on the maintenance plan component of the redesignation request. The State included responses to all public comments in the submittal.

II. Redesignation Under Section 107(d)(3)(E) Criteria

Section 107(d)(3)(E) of the Act provides five specific requirements that an area must meet to be redesignated from nonattainment to attainment:

1. The area has attained the applicable NAAQS;
2. The area has met all relevant requirements under section 110 and part D of the Act;
3. The area has a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement is permanent and enforceable;
5. The area has a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of State Submittal

The Minnesota redesignation request for the Minneapolis/St. Paul area meets the five requirements of section 107(d)(3)(E). EPA's Technical Support Document, dated May 3, 1999, from Michael Leslie to the Docket, entitled "*Technical Review of Minnesota's State Implementation Plan Revision for the Minneapolis/St. Paul Nonattainment Area Carbon Monoxide Redesignation*," contains a detailed analysis of the Minnesota redesignation request and the Section 175A maintenance plan for the Minneapolis/St. Paul area. An abbreviated analysis of the Minnesota redesignation request is set forth below.

A. Attainment of the CO NAAQS

The Minnesota request is based on ambient air CO monitoring data for calendar year 1995 through calendar year 1996. The data, which has been reviewed for technical precision and accuracy, shows no violations of the CO NAAQS in the Minneapolis/St. Paul area. Further, EPA has reviewed 1997 and 1998 CO monitoring data which also indicate no violations of the CO NAAQS. Because the Minneapolis/St. Paul area has quality-assured data which indicate no violations of the standard over the two most recent and consecutive calendar year periods, the Minneapolis/St. Paul area has met the first statutory criterion for redesignation to attainment of the CO NAAQS. The State will continue to monitor the area in accordance with 40 CFR part 58. (If

complete quality assured data show violations of the CO NAAQS before the final EPA action on this redesignation, the EPA proposes that it disapprove the redesignation request.)

B. Meeting Applicable Requirements of Section 110 and Part D

Minnesota is required to have a fully adopted SIP before the Minneapolis/St. Paul area can be redesignated to attainment for CO. On June 16, 1980 (45 FR 40581), EPA gave final approval to Minnesota's SIP for the Minneapolis/St. Paul area as meeting the requirements of section 110(a)(2) and part D of the Act. For the purpose of fulfilling the Part D requirements for all nonattainment areas in the State, Minnesota Pollution Control Agency (MPCA) submitted, and EPA approved on May 2, 1995, and April 28, 1994, respectively, the State's operating permit program (60 FR 21451) and the New Source Review program (59 FR 21941). Specific requirements under section 110 and additional sections under part D of the Act are discussed below, including those requirements arising under the 1990 amendments to the Act.

1. Section 110 Requirements

The Minneapolis/St. Paul area SIP meets the requirements of section 110(a)(2) of the Act as amended by the 1990 amendments. As noted above, on June 16, 1980 (45 FR 40581) EPA approved Minnesota's SIP for the Minneapolis/St. Paul area for meeting, among other things, the requirements of section 110. Although the 1990 amendments amended certain provisions of section 110 of the Act (57 FR 27936 and 57 FR 23939, June 23, 1993), the EPA analyzed the SIP and has determined that it is consistent with the requirements of amended section 110(a)(2).

2. Part D Requirements

The Minneapolis/St. Paul CO nonattainment area must fulfill the applicable requirements of part D before it can be redesignated to attainment. Under part D, applicable requirements are based upon an area's severity classification. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 3 of part D sets forth additional requirements for CO nonattainment areas classified pursuant to table 1 of section 186(a). Because the Minneapolis/St. Paul area has a design value of 12.7 ppm CO, it is classified as moderate CO nonattainment pursuant to table 1 of section 186(a). Therefore, prior to

redesignation, the Minneapolis/St. Paul CO nonattainment area must meet all of the applicable requirements of subpart 1 of part D (including the requirements set forth at sections 172(c) and 176 of the Act) and subpart 3 of part D.

a. Subpart 1 of Part D—Section 172(c) Provisions. Section 172(c) sets forth general requirements applicable to all nonattainment area SIPs, including provisions which implement reasonably available control technology (RACT) for existing sources, a new source review (NSR) program which meets the requirements of section 173, reasonable further progress (RFP) toward attainment of the applicable standard, an emission inventory of sources of the relevant pollutant, and a demonstration of attainment by the applicable attainment date. Under 172(b), a schedule of plan submissions to fulfill the section 172(c) requirements must be submitted to EPA no later than three years after an area has been designated as nonattainment.

Minnesota has satisfied all of the section 172(c) requirements necessary for redesignation of the Minneapolis/St. Paul area. Further, because the Minneapolis/St. Paul area was subject to the nonattainment plan requirements in effect prior to the enactment of the 1990 Amendments, many of the subpart 1 requirements had been met prior to the enactment of the amendments.

The Minnesota SIP provides for the implementation of RACT for existing CO sources, as required by section 172(c)(1). The Minnesota SIP meets the requirements for RFP. Further, because the Minneapolis/St. Paul area has attained the CO NAAQS, no new RFP requirements under section 172(c)(2) apply. The Section 172(c)(3) emissions inventory requirements were met when EPA approved the 1990 base year inventory on September 19, 1994 (59 FR 47807).

Section 172(c)(4) requires states to demonstrate that emissions quantified based upon growth will be consistent with the achievement of RFP, and will not interfere with attainment of the applicable NAAQS. The proposed maintenance plan demonstrates continued attainment through the year 2009. Further, the State will maintain an ambient monitoring network to ensure that the NAAQS continue to be met.

Section 172(c)(5) requires states to implement NSR permitting requirements that meet the requirements of section 173 of the Act. Minnesota's operating permit program and New Source Review program, which EPA approved on May 2, 1995 (60 FR 21451) and April 28, 1994 (59 FR 21941),

respectively, meet section 173 requirements.

Section 172(c)(9) of the Act requires contingency plans in the event that the nonattainment fails to make RFP or the standard. Here, however, the area has met its RFP requirements and has attained the standard. Further, Minnesota has provided contingency measures in the proposed 175A maintenance plan. Therefore, it is unnecessary to apply the requirement for contingency measures for this nonattainment area under the de minimis approach.

b. Subpart 1 of Part D—Section 176 Conformity Provisions. Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 of the Act further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. EPA approved Minnesota's general conformity rule on April 23, 1997 (62 FR 19674).

The EPA believes the conformity requirements are not applicable requirements for evaluating the redesignation request under section 107(d). This is based on two related factors. First, redesignated areas are required by their section 175A maintenance plans to submit SIP revisions to comply with the conformity provisions of the Act. Second, EPA's Federal conformity rules require conformity analyses for areas that lack federally approved State rules. Therefore, areas are subject to the conformity requirements when designated to attainment or when not subject to federally approved State rules. Therefore, conformity requirements are not required for purposes of evaluating a redesignation request. Consequently, the CO redesignation request for the Minneapolis/St. Paul area may be approved notwithstanding the lack of a fully approved conformity SIP.

Included in the submittal is a commitment by the State to satisfy the applicable requirements of the final transportation conformity rules. This is acceptable because the transportation conformity rule applies to maintenance areas.

For purposes of transportation conformity, the control measures in the maintenance plan establish an emissions budget. The State has defined this budget for year 2009 as 993 tons per day of CO for onroad mobile sources. This level of emissions provides for continued maintenance of the CO standard.

c. Subpart 3 of Part D Requirements. The Minneapolis/St. Paul area is classified as moderate nonattainment (less than 12.7 ppm CO). Hence, part D, Subpart 3, section 187(a) requirements apply. Section 187(a) requirements that were in effect prior to the submission of the request to redesignate the Minneapolis/St. Paul area must be fully approved into the SIP prior to redesignating the area to attainment. EPA's approval of these provisions are discussed below:

(1) 1990 Base Year Emission Inventory

On September 19, 1994 (59 FR 47807), EPA approved the 1990 base year emission inventory for the Minneapolis/St. Paul area.

(2) Oxygenated Fuel Program

On October 4, 1994 (59 FR 50493), EPA approved the Oxygenated fuel program for the Minneapolis/St. Paul area.

(3) 1993 Periodic CO Emissions Inventory

On October 27, 1997 (62 FR 55203), EPA approved the 1993 Periodic CO emissions inventory for the Minneapolis/St. Paul area.

(4) Inspection/Maintenance (I/M)

Section 187(a)(4) of the Act requires states with areas designed moderate nonattainment for CO to improve existing I/M programs or implement new ones. Because the Minneapolis/St. Paul area is classified as a moderate CO nonattainment area, Section 187 required the State to develop a SIP for I/M that met the basic I/M requirements contained in the Act and in the corresponding regulations codified at 40 CFR part 51, subpart S.

On November 10, 1992, the State submitted its initial I/M plan to the EPA, which it supplemented by submittals made on November 12, 1993, and December 15, 1993. On October 13, 1994, the EPA published a rulemaking action approving, and conditionally approving, portions of Minnesota's I/M plan. A detailed discussion of EPA's rulemaking action can be found in the final rule at 59 FR 51860. As part of the rulemaking action the EPA identified a number of deficiencies in the State's plan and issued a conditional approval,

requiring Minnesota to submit a revised plan within one year of the conditional approval date. Although the State timely responded to the deficiencies by submittals dated July 8, 1996, and September 24, 1996, the State legislature is currently modifying the existing I/M legislation to finalize corrections to the deficiencies. EPA has not yet acted on these submittals. EPA will not finalize its approval of the redesignation until such time that EPA approves the State's I/M SIP for the Minneapolis/St. Paul area.

As described above, the State has presented an adequate demonstration that it has met the requirements applicable to the area under section 110 and part D.

C. Fully Approved SIP Under Section 110(k) of the Act.

The third redesignation requirement set forth in section 107(d)(3)(E) is that the area have a fully approved SIP under section 110(k) of the Act. Upon EPA's approval of the Minneapolis/St. Paul I/M program and of this maintenance plan submittal, the State will have a fully approved SIP under section 110(k). As discussed above, these approvals will also satisfy the section 107(d)(3)(E) requirement that the area meet all requirements under section 110 and part D of the Act.

D. Improvement in Air Quality Due to Permanent and Enforceable Measures

The fourth redesignation requirement set forth in section 107(d)(3)(E) requires the State to demonstrate that the actual enforceable emission reductions are responsible for the recent improvement in air quality. This demonstration may be accomplished through an estimate of

the percent reduction (from the year that was used to determine the design value for designation and classification) achieved through Federal measures, such as the Federal Motor Vehicle Control Program (FMVCP) or the fuel volatility rules, or through control measures that the State has adopted and implemented.

The State established the emission reductions for the period from 1990 to 1996 based on the FMVCP and fuels programs, which the State determined are responsible for the improvement in air quality. All emission projections are based on the 1990 base year emission inventory, which EPA approved on September 19, 1994 (59 FR 47807).

Consistent with emission inventory guidance, the 1990 base year emission inventory represents 1990 average winter day actual emissions for the Minneapolis/St. Paul area. The State projected the 1990 base year emissions forward to 1996, in order to determine the emission reductions during this time period. The State developed the growth factors for the projections.

Based on available actual emission data from 1995, Minnesota estimated the 1996 point source emissions as equivalent to the 1995 actual emissions. Minnesota estimated future years (1998 and beyond) point source emissions by using the maximum potential to emit, which included current controls.

Minnesota developed area source growth factors from the Twin Cities Metropolitan Council and the State Planning Office projections of employment, housing, and population data. Minnesota applied the growth factors to the 1990 base year inventory for the Minneapolis/St. Paul area. The

State also utilized growth factors for railroad emissions developed from the United States Bureau of Public Analysis projections.

The State used the MOBILE5a model to develop the mobile source emission estimates. The significant input parameters for the MOBILE5a model are presented in Chapter 3 of the State's TSD. The State employed methodologies to develop the on-highway mobile source emissions, which included the Federal highway administration (FHWA) highway performance monitoring system (HPMS) traffic count for 1990 vehicle miles traveled (VMT), supplemental traffic count data meeting HPMS standards for 1990, projection of VMT to projection years using a transportation model calibrated with HPMS VMT data, and MOBILE5a emission factors and estimating emissions with modeled VMT and MOBILE5a. Mobile source methodologies are described in detail in Chapter 3 of the State's TSD.

The following tables present the CO emissions for 1990 and 1996 and emission reductions from 1990 to 1996. The State claimed credit for emission reductions achieved as a result of implementation of the federally enforceable FMVCP, oxygenated fuel, and I/M control measures. The emission reductions claimed are conservative since they do not account for emission reductions resulting from other control measures and programs implemented during this time period.

As illustrated by the tables and discussed in the State's submittal, the total reductions achieved from 1990 to 1996 are 931 tons of CO per day.

TABLE 1.—CO EMISSION INVENTORY SUMMARY FOR DEMONSTRATION OF EMISSION REDUCTIONS FROM 1990–1996
[Tons per day]

Category	1990	1996	Net change 1988–1993
Point	274	169	– 105
Area	283	303	+20
Non-Road Mobile	173	189	+16
On-Road Mobile	1976	1114	– 862
Total	2706	1775	– 931
Net Reduction .....	.....	.....	– 931

The State has demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions of 931 tons of CO per day as a result of implementing the federally enforceable FMVCP, Oxygenated Fuel, and Inspection/Maintenance reductions.

E. Fully Approved Maintenance Plan Under Section 175A

The final requirement for redesignation under section 107(d)(3)(e) is that the area has a fully approved maintenance plan pursuant to section 175A of the Act. Section 175A of the Act sets forth the elements for maintenance plans for areas seeking

redesignation. Such plans must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, States must submit revised maintenance plans which demonstrate attainment for the 10 years following the initial 10-year

period. To address potential future NAAQS violations, maintenance plans must contain contingency measures, with schedules to assure prompt correction of any air quality problems. Section 175A(d) requires that the contingency provisions include a requirement that States implement all control measures contained in the SIP prior to redesignation.

In this action, EPA is proposing approval of the State of Minnesota's 175A maintenance plan for the Minneapolis/St. Paul area. EPA finds that Minnesota's submittal meets the requirements of section 175A, provided that the State continues to implement all the control measures contained in the SIP prior to redesignation as an attainment area. If, after notice and comment, EPA determines that it should give final approval to the maintenance plan, the Minneapolis/St. Paul nonattainment area will have a fully approved maintenance plan in accordance with section 175A. The

following is a discussion of the basis for proposing approval of Minnesota's 175A maintenance plan.

1. Emissions Inventory—Attainment Inventory

The State has developed an attainment emission inventory for 1996 that identifies 1775 tons of CO per day as the level of emissions in the area sufficient to attain the CO NAAQS.

All inventories in the maintenance plan were derived from the 1990 base year emission inventory. The methodologies used in developing these inventories are discussed in section (3) of EPA's TSD and in further detail in sections 4.0 and 6.0 of the State's TSD. EPA approved the 1990 base year emission inventory on September 19, 1994 (59 FR 47806). The State has adequately developed an attainment emissions inventory for 1996 that identifies the levels of emissions as 1775 tons of CO per days the level of emissions in the area sufficient to attain the NAAQS.

2. Demonstration of Maintenance—Projected Inventories

To demonstrate continued attainment the State projected CO emissions through the maintenance period to the year 2009 and for interim years 1998 and 2008. These emissions are presented in Table 2 of the submittal and summarized below in Table 2. These projected emission inventories demonstrate that the CO emissions will remain below the attainment year, 1996, emission levels. The emissions projections through the year 2009 show an emissions reduction of 1026 tons of CO per day by 2009. These emission reductions are primarily the result of continued implementation of the federally enforceable FMVCP.

The methodologies used in developing the projection inventories are the same as those employed for the other inventories contained in the submittal and are discussed in EPA's TSD and in further detail in sections 4.0 and 6.0 of the State's TSD.

TABLE 2.—CO MAINTENANCE EMISSION INVENTORY PROJECTION SUMMARY THROUGH 2009

[Tons per day]

Category	1990	1996	1998	2008	2009	Net change 1993–2009
Point	274	169	229	229	229	– 45
Area	283	303	311	338	340	57
Non-Road Mobile	173	189	195	212	213	40
On-Road Mobile	1976	1114	1032	882	898	– 1078
Total	2706	1775	1767	1661	1680	– 1026
Net Reduction						– 1026

The State has adequately demonstrated continued attainment of the CO NAAQS through the projection of CO emissions through the 10 year maintenance period to 2009 and for the interim years 1998 and 2008. These projections indicate that CO emissions throughout the maintenance period will remain well below the 1996 attainment inventory.

The performed microscale CO modeling to predict maximum CO concentrations for ten "hot-spot" intersections. The State used the procedures outlined in EPA's guidance entitled, "Guideline for Modeling Carbon Monoxide from Roadway Intersections," to select the appropriate intersections for the modeling analysis. The intersections in Table 3 were selected based traffic volumes and Level of Service (LOS), which are indicators of potential hot-spots.

TABLE 3.—INTERSECTIONS USED FOR MICROSCALE CO MODELING

Intersection	Area type
T.H. 169 at CSAH 81	Developing.
T.H. 101 at T.H. 7	Developing.
T.H. 100 at CSAH 81	Developing.
T.H. 10 at University	Developing.
T.H. 252 at 85th Ave.	Developing.
T.H. 252 at 66th Ave.	Developing/
	Developing.
T.H. 252 at Brookdale Dr.	Developing.
University at Lexington Ave.	St. Paul.
Snelling at University	St. Paul.
Hennepin Ave. at Lake St.	Minneapolis.

Information on the approach volumes, intersection signal timing, intersection geometries, meteorological condition are necessary to perform the analysis. The State obtained this traffic data from the Minnesota Department of Transportation, the city of Minneapolis, the city of St. Paul, various consultants. Growth factors for the intersections future year volumes were developed by the Metropolitan Council, the

Metropolitan Planning Organization for the Minneapolis/St. Paul area.

Two scenario's were modeled as part of the analysis. First, CO concentrations were modeled with the current I/M program and oxygenated fuel program in place. Second, CO concentrations were modeled with only oxygenated fuel program in place, assuming that the I/M program is discontinued in 1998.

The State used EPA approved models CAL3QHC and CAL3QHCR to generate CO concentrations for the microscale analysis. The MOBILE5a model was used to generate idle and free flow emission factors for the analysis. The submittal provides detailed information on the I/M program (with the associated anti-tampering program), parameters for the oxygenated fuel program, ambient temperature, and Reid Vapor Pressure. MOBILE model defaults were used for the vehicle population mix and vehicle mileage accumulation. Results of the modeling analysis are shown in Tables 4 and 5.

TABLE 4.—CO CONCENTRATIONS FOR YEAR 1998

Intersection	Current I/M Program	
	1 hour concentration	8 hour concentration
T.H. 169 at CSAH 81	11.8	8.5
T.H. 101 at T.H. 7	11.2	8.1
T.H. 100 at CSAH 81	11.1	8.0
T.H. 10 at University	10.9	7.8
T.H. 252 at 85th Ave	12.5	9.0
T.H. 252 at 66th Ave	10.8	7.8
T.H. 252 at Brookdale Dr	10.2	7.3
University at Lexington Ave	9.3	6.8
Snelling at University	9.9	7.2
Hennepin Ave. at Lake St	9.2	6.6

TABLE 5.—CO CONCENTRATIONS FOR YEAR 2008

Intersection	Current I/M Program		Without current I/M program	
	1 hour concentration	8 hour concentration	1 hour concentration	8 hour concentration
T.H. 169 at CSAH 81	9.7	7.0	10.7	7.7
T.H. 101 at T.H. 7	9.0	6.5	10.0	7.2
T.H. 100 at CSAH 81	8.2	5.9	9.1	6.5
T.H. 10 at University	8.1	5.8	9.0	6.5
T.H. 252 at 85th Ave	9.9	7.1	10.7	7.7
T.H. 252 at 66th Ave	8.4	6.0	9.4	6.8
T.H. 252 at Brookdale Dr	8.5	6.1	9.2	6.6
University at Lexington Ave	7.7	5.6	8.4	6.1
Snelling at University	8.0	5.8	8.8	6.4
Hennepin Ave. at Lake St	6.9	5.0	8.7	5.5

These modeled values are below the NAAQS for both the 1 hour (35 ppm) and the 8 hour (9 ppm) standard through the maintenance period.

3. Verification of Continued Attainment

Section 175A requires States to set up a process to assess the area's continued maintenance of the applicable NAAQS. This process must include operation of the area's monitoring network, tracking of emissions through modeling or emissions inventories, and setting up triggers for implementing the contingency plan. The following is a discussion of Minnesota's fulfillment of these requirements.

a. Ambient Air Quality Monitoring Network. In its submittal and TSD, the State commits to continue to operate and maintain the network of ambient CO monitoring stations in accordance with provisions of 40 CFR part 58, in order to demonstrate ongoing compliance with the CO NAAQS.

b. Tracking of Attainment. The State's submittal presents a tracking plan for the maintenance period which consists of two components: continued CO monitoring and inventory or modeling updates. The State will continue to monitor CO levels throughout the area to demonstrate ongoing compliance with the CO NAAQS. The State also

commits to conduct periodic inventories for the redesignated area every three years using the most recent emission factors, models and methodologies. The inventories will begin in 2002, with reviews conducted every 3 years. The State will submit to EPA a review of the assumptions and data used for the development of the attainment inventory in 2002. The periodic inventory will consist of reviewing the assumptions of the maintenance demonstration such as VMT, population, and employment.

The modeling demonstrations will be reevaluated every three years. The State will determine the validity of the modeling assumptions and the input data as part of this analysis.

c. Triggers. The contingency plan contains one trigger, a monitored air quality violation of the CO NAAQS, as defined in 40 CFR 50.8. The trigger date will be the date that the State certifies to the U.S. EPA that the air quality data are quality assured, which will be no later than 30 days after an ambient air quality violation is monitored. The justification for providing only one trigger is that section 175A(d) explicitly stipulates that a contingency measure must ensure prompt correction of any violation of the NAAQS once the area is redesignated.

4. Contingency Plan

The level of CO emissions in the Minneapolis/St. Paul area will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the Act, Minnesota has provided contingency measures with a schedule for implementation in the event of a future CO air quality problem. Contingency measures contained in the plan include basic I/M, Transportation Control Measures (TCM), and expansion of the Oxygenated fuels program. Once the triggering event, a violation of the CO NAAQS, is confirmed, the State will implement one or more appropriate contingency measures. Minnesota will select the contingency measures within 6 months of a triggering event. The EPA understands, on the basis of the State's submission, that the adoption and implementation schedules specified in the Act and any corresponding regulations will be used. Therefore, the following schedules are applicable for the contingency measures specified in the contingency plan. Section 175A of the Act requires that a maintenance plan

contain a contingency plan that will promptly correct a violation of the CO NAAQS that occurs after the area is redesignated to attainment.

a. Inspection and Maintenance. The State will implement a basic I/M program in the seven county Minneapolis/St. Paul metropolitan area to meet 40 CFR 51.352 basic I/M requirements. The enabling legislation was adopted in June 1, 1996 and authorizes the State to use these I/M upgrades as a contingency measure in areas redesignated to attainment. I/M will be implemented within two years of the selection of this contingency measure. This time is necessary to develop the Request for Proposal, solicit and assess bids, select a contractor, negotiate a contract, and start up the program. The schedule for adoption and implementation of basic I/M as a contingency measure, will be consistent with that provided for in the Act and the I/M regulation.

b. Transportation Control Measures. The State will require the implementation of the appropriate transportation control Measures (TCMs) to correct local CO hot spot problems. The type of TCMs will be selected by best engineering practice to address the problem. TCMs will be implemented within one year of the selection of this contingency measure. This time would be necessary to coordinate with local and/or state governments to assure that these entities complete any appropriate processes such as form policy, change local ordinances, etc.

c. Oxygenated Fuel Program. The State of Minnesota is currently implementing an oxygenated fuel programs for CO control. The State will propose amending existing legislation to change the oxygen content of fuel from the current level of 2.7 percent to 3.5 percent in the control area. Implementation of this measure would occur within one year of selection. This time line is necessary to amend existing legislation.

The EPA finds that the three contingency measures provided in the State submittal meet the requirements of section 175A(d) of the Act since they would promptly correct any violation of the CO NAAQS.

5. Commitment To Submit Subsequent Maintenance Plan Revisions

The State has committed to submit a new maintenance plan within eight years of the redesignation of the Minneapolis/St. Paul area as required by section 175(A)(b). This subsequent maintenance plan must constitute a SIP revision and provide for the maintenance of the CO NAAQS for a

period of 10 years after the expiration of the initial 10 year maintenance period.

IV. Proposed Action

The EPA proposes to approve the Minneapolis/St. Paul CO maintenance plan as a SIP revision meeting the requirements of section 175A. In addition, the EPA is proposing approval of the redesignation request for the Minneapolis/St. Paul area, subject to final approval of the maintenance plan, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation pending full approval of the SIP element listed above. (In the alternative, if ambient air quality violations occur before EPA takes final action on the proposed redesignation or if the EPA does not fully approve any of the SIP revisions listed above, the EPA proposes to disapprove this redesignation request.) EPA will not finalize the approval of the maintenance plan and redesignation request until the Minneapolis/St. Paul I/M program is approved by EPA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

CO SIPs are designed to satisfy the requirements of part D of the Act and to provide for attainment and maintenance of the CO NAAQS. This proposed redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the Act) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the

requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act (Act) preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that

may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 5, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99-12161 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA012-0144b, FRL-6335-4]

Approval and Promulgation of Implementation Plan for South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the new source review (NSR) program. The purpose of this action is to meet requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to NSR in areas that have not attained the national ambient air quality standards (NAAQS). This approval action will incorporate the approved rules into the federally approved SIP for California, and will delete a number of the existing rules from the SIP. The rules were submitted by the State to

satisfy certain Federal requirements for an approvable NSR SIP.

In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The District has provided public workshops in the development of the submitted rules, and provided the opportunity for public comment prior to changes to its rules. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated in relation to these rules. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on these proposed rules. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 14, 1999.

ADDRESSES: Written comments should be addressed to: Nahid Zoueshtiagh (Air-3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours at the following address: Air-3, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh (Air-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1261.

SUPPLEMENTARY INFORMATION: This document concerns the above listed rules submitted to the EPA on April 5, 1991 (Rules 203.1, 203.2, 204.1, 213.2, 213.3), May 13, 1991 (Rules 201, 201.1, 203, 205, 209, 211, 214, 215, 216, 217), and February 28, 1994 (Rules 204, 206, 210) by the California Air Resources Board. Since submittal to EPA, the

District has rescinded Rules 203.1, 203.2, 204.1, 211, 213, 213.1, and 213.2. EPA is not taking any action on the rescinded Rules 203.1, 203.2 and 204.1 because they were not a part of the SIP. However, EPA is approving rescission of Rules 211, 213, 213.1 and 213.2, because the requirements of these rules are now contained in Rules 212 and Regulation XIII. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99-12000 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL-6340-7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions From Existing Hazardous/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this action, EPA proposes to approve the North Dakota State Plan for control of air emissions from existing Hazardous/Medical/Infectious Waste Incinerators (HMIWI). The plan provides for implementation and enforcement of the Emissions Guidelines applicable to each existing HMIWI for which construction was commenced on or before June 20, 1996. In the final rules section of this **Federal Register**, EPA is approving the State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please see the direct final notice of this action located elsewhere in today's **Federal Register** for a

detailed description of the North Dakota State Plan.

DATES: Comments must be postmarked by June 14, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Richard R. Long, Director, Air and Radiation Program (8P-AR), at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency,
Region 8, Office of Air and Radiation,
999 18th Street, Suite 500, Denver,
Colorado 80202, telephone (303) 312-6470.

North Dakota Health Department,
Environmental Health Section, 1200
Missouri Avenue, P.O. Box 5520,
Bismark, North Dakota 58506-5520,
telephone (701) 328-5188.

FOR FURTHER INFORMATION CONTACT:

Kathleen Paser, Region 8, Office of Air and Radiation, at the above address, telephone (303) 312-6526.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 62

Environmental protection,
Administrative practice and procedure,
Air pollution control, Intergovernmental
relations, Reporting and recordkeeping
requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: April 30, 1999.

Patricia D. Hull,

Acting Administrator, Region VIII.

[FR Doc. 99-12002 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL-63423]

RIN 2060-AG85

Inspection Date at Idaho National Engineering and Environmental Laboratory and Availability of Waste Characterization and Quality Assurance Program Documents Applicable to Transuranic Radioactive Waste at the Nevada Test Site Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the date for an upcoming inspection of the Idaho National Engineering and Environmental Laboratory (INEEL). The inspection will be conducted the week of May 17, 1999. Additional information on the INEEL inspection, including the announcement of a public comment period on relevant site documents, was previously published on April 16, 1999, at 64 FR 18870.

EPA is also announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization and quality assurance programs applicable to transuranic (TRU) radioactive waste at the Nevada Test Site (NTS) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are: "Bechtel Nevada Transuranic Waste Characterization Quality Assurance Project Plan, L-E10.301.LWC, May 1998" (hereafter NTS TRU QAPJP); "Nevada Test Site Transuranic Waste Certification and Quality Assurance Plan, B-A20/97.03, Revision 0, 2/4/98" (hereafter NTS Certification Plan); "Mobile Characterization Services (MCS) Transuranic Waste Characterization Program Quality Assurance Project Plan, MCS-102, Rev. B, 10/21/98" (hereafter MCS TRU QAPJP); and "TRUtech Team Mobile Systems Program Transuranic Waste Characterization Quality Assurance Project Plan, TT-DOC-001, August 17, 1998" (hereafter TRUtech TRU QAPJP). These documents are available for review in the public dockets listed in **ADDRESSES**. The EPA will use these documents to evaluate waste characterization systems and processes and the quality assurance program at NTS. In accordance with

EPA's WIPP Compliance Criteria at 40 CFR 194.8, EPA will conduct an inspection of waste characterization systems and processes and an audit of the quality assurance program at NTS the week of June 7, 1999, to verify that these programs can properly control the characterization of transuranic waste at issue, consistent with the Compliance Criteria. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: The EPA is requesting public comment on the Nevada Test Site documents as they apply to the scope of the inspection announced in this notice. Comments must be received by EPA's official Air Docket on or before June 14, 1999.

ADDRESSES: Comments should be submitted to: Docket No. A-98-49, Air Docket, Room M-1500 (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

The DOE documents (NTS TRU QAPjP, NTS Certification Plan, MCS TRU QAPjP, and TRUtech TRU QAPjP) are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A-98-49, Category II-A-2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10am-9pm, Friday-Saturday, 10am-6pm, and Sunday, 1pm-5pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Monday-Thursday, 8am-9pm, Friday, 8am-5pm, Saturday-Sunday, 1pm-5pm; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Monday-Thursday, 8am-12pm, Friday, 8am-5pm, Saturday, 9am-5pm, and Sunday, 1pm-9pm.

Copies of items in the docket may be requested by writing Docket A-98-49 at the address provided above, or by calling (202) 260-7548. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jim Oliver, Office of Radiation and Indoor Air, (202) 564-9732, or call EPA's 24-hour, toll-free WIPP Information Line, 1-800-331-WIPP, or visit our website at <http://www.epa.gov/radiation/wipp/announce.html>.

SUPPLEMENTARY INFORMATION: General background for this notice is identical to that provided in previous **Federal Register** notices. (See 64 FR 18870, 14418)

The Nevada Test Site (NTS) documents submitted by DOE to EPA

are: NTS TRU QAPjP, NTS Certification Plan, MCS TRU QAPjP, and TRUtech TRU QAPjP (see SUMMARY for full titles). The NTS TRU QAPjP, MCS TRU QAPjP, and TRUtech TRU QAPjP set forth the quality assurance program applied to TRU waste characterization at NTS. The NTS Certification Plan sets forth the waste characterization procedures for TRU wastes at NTS. After EPA reviews these documents, EPA will conduct an inspection of NTS the week of June 7, 1999, to determine whether the requirements set forth in these documents are being adequately implemented in accordance with Conditions 2 and 3 of the EPA's WIPP certification decision (Appendix A to 40 CFR Part 194). In accordance with § 194.8 of the WIPP compliance criteria, EPA is providing the public 30 days to comment on the documents placed in EPA's docket relevant to the site approval process.

If EPA determines that the provisions in the documents are adequately implemented, EPA will notify the DOE by letter and place the letter in the official Air Docket in Washington, D.C., and in the informational docket locations in New Mexico. A positive approval letter will allow DOE to ship TRU waste from NTS to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the EPA's radioactive waste disposal standards (40 CFR Part 191), the compliance criteria (40 CFR Part 194), and the EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R-89-01, A-92-56, and A-93-02, respectively, and is available for review in Washington, D.C., and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, D.C., plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: May 7, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99-12159 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. 99-5474]

RIN 2132-AA63

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Proposed rule; notice of meeting.

SUMMARY: On April 7, 1999, the Federal Transit Administration (FTA) published a Notice of Proposed Rulemaking (NPRM) describing the procedures that FTA proposes to use to evaluate and rate candidate projects for capital investment grants and loans for new fixed guideway systems and extensions to existing systems ("new starts") (64 FR 17062-71). The Transportation Equity Act for the 21st Century (TEA-21) requires FTA to issue regulations covering the evaluation and rating of such projects. The docket for this NPRM is open for public comment until July 6, 1999; FTA invites public comment, and included a number of questions in the NPRM soliciting specific comment. In order to encourage public comment, FTA intends to host three workshops on the NPRM. This notice announces the dates, times, locations and procedures for those workshops.

DATES: The three workshops are scheduled as follows:

1. May 24, 1999, 2:00 p.m. to 5:00 p.m. (local time); Toronto, Ontario.
2. June 3, 1999, 9:00 a.m. to 12:30 p.m. (local time); San Francisco, CA.
3. June 8, 1999, 9:00 a.m. to 12:30 p.m. (local time); Washington, DC.

ADDRESSES: The Toronto, Ontario workshop will be held in the Essex Ballroom at the Sheraton Centre Toronto Hotel, 123 Queen St. West, Toronto, Ontario, M5H 2M9, in conjunction with the 1999 APTA Commuter Rail/Rapid Transit Conference. The San Francisco, CA workshop will be held at: Joseph P. Bort MetroCenter Auditorium, 101 Eighth Street, Oakland, California (adjacent to the Lake Merritt BART station). The Washington, DC workshop will be held at: U.S. Department of Transportation, room 3200-3204, 400 7th Street SW, Washington, DC 20590. Written material submitted at the workshops will be placed in the rulemaking docket. Interpreters and alternative-format information are available upon request; requests should be made by May 17 for any of the workshops.

FOR FURTHER INFORMATION CONTACT: John Day, Office of Policy Development, FTA, (202) 366-4060.

SUPPLEMENTARY INFORMATION: On April 7, 1999, FTA issued a Notice of Proposed Rulemaking (NPRM) to carry out the requirements of Section 3009(e)(5) of TEA-21 (64 FR 17062-71). This statute directs FTA to issue regulations that define the process that FTA will use to evaluate candidate new starts under the criteria contained in 49 U.S.C. 5309. When issued, the Final Rule will set forth the approach FTA will use to evaluate candidate projects in terms of their justification and local financial commitment, as required under 49 U.S.C. 5309(e). Consistent with 49 U.S.C. 5309(e)(6), as amended by Section 3009(e) of TEA-21, these procedures will also be used to approve candidate projects for entry into preliminary engineering and final design. These procedures will also be used to evaluate projects in order to make recommendations for funding in the annual report to Congress required by 49 U.S.C. 5309(o)(1).

Notice of Meeting and Meeting Procedures

FTA believes that the public will benefit from an opportunity for dialog concerning the NPRM on evaluation of major capital investment projects, or new starts. Therefore, FTA is holding three public workshops, as follows: May 24, 1999; Toronto, Ontario, in conjunction with the 1999 APTA Commuter Rail/Rapid Transit Conference; June 3, 1999; San Francisco, CA; June 8, 1999; Washington, DC. Information gathered at the workshops will be included in the rulemaking docket and evaluated in conjunction with the development of the Final Rule. This notice establishes the general procedures set forth below to facilitate the workshops.

The workshops are intended to solicit public views and information on the proposed rule. Therefore, they will be conducted in an informal and nonadversarial manner.

The San Francisco, CA and Washington, DC workshops will last 3½ hours, beginning at 9:00 a.m.; the Toronto, Ontario workshop will last 3 hours, beginning at 2:00 p.m. The format will consist of an overview of the NPRM, including relevant background

information, by FTA officials. A general question-and-answer session will follow.

Seating will be limited by available room size and will be made available on a first-come, first-served basis, with some seats reserved as necessary for speakers, interpreters and persons requiring their services, and others requiring specific accommodations. For those who cannot attend, a tape recording, transcript, or other record of the workshops will be available in the rulemaking docket after the workshops.

We will try to accommodate all attendees who wish to speak during the question-and-answer period. Speakers will be accommodated on a first-come, first-served basis; however, FTA reserves the right to exclude some speakers or limit their time in order to provide equal opportunity to all who wish to speak.

All statements and materials received at the workshop will become part of the rulemaking docket.

Issued: May 7, 1999.

Gordon J. Linton,
Administrator.

[FR Doc. 99-12034 Filed 5-12-99; 8:45 am]

BILLING CODE 4910-57-P

Notices

Federal Register
Vol. 64, No. 92
Thursday, May 13, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99-029-1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality

of the human environment. Based on its findings of no significantly impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room, 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737-1237; (301) 734-7710. For copies of the environmental assessments and findings of no significant impact, contact Ms. Linda Lightle at (301) 734-8231; e-mail: linda.lightle@usda.gov. Please refer to the permit numbers listed below when ordering documents

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A

permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing the permit applications, the Animal and Plant Health Inspection Service (APHIS) assessed the impact on the environment that releasing the organisms under the conditions described in the permit applications would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicant and on our review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
98-355-01r	USDA/ARS	3-17-99	<i>Fusarium moniliforme</i> fungus genetically engineered to express reduced virulence and antibiotic resistance tested in corn..	Illinois, Iowa
98-032-03r	USDA/ARS	3-17-99	Citrus viroid III genetically engineered to produce dwarfing in citrus trees..	Florida

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et. seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 6th day of May, 1999.
Joan M. Arnoldi,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 99-12149 Filed 5-12-99; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation Amendment for North Dakota (ND) to Provide Official Services in the Southern Illinois (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).
ACTION: Notice.

SUMMARY: Under the United States Grain Standards Act (Act), GIPSA has amended the designation of North Dakota Grain Inspection Service, Inc. (North Dakota), to include the former Southern Illinois area.

DATE: Effective on April 26, 1999.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Ave., S.W., Washington, DC 20250-3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 1999, **Federal Register** (64 FR 10270), GIPSA announced the designation of North Dakota to provide official inspection services under the Act effective July 1, 1999, and ending March 31, 2002. North Dakota asked GIPSA to amend their geographic area to include the former Southern Illinois area, due to the purchase of the designated corporation, Southern Illinois Grain Inspection Services, Inc. (Southern Illinois).

Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate an agency to provide official services within a specified geographic area, if such agency is qualified under section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and determined that North Dakota is qualified.

GIPSA announces designation of North Dakota to provide official inspection services under the Act, in the former Southern Illinois, area effective April 26, 1999, and ending March 31, 2002, concurrently with the end of North Dakota's current designation.

Pursuant to section 7(f)(2) of the Act, the following additional geographic area, in the State of Illinois, is assigned to North Dakota.

Bounded on the East by the eastern Cumberland County line; the eastern Jasper County line south to State Route 33; State Route 33 east-southeast to the Indiana-Illinois State line; the Indiana-Illinois State line south to the southern Gallatin County line;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State

Route 51; State Route 51 south to the Mississippi River; and

Bounded on the West by the Mississippi River north to the northern Calhoun County line;

Bounded on the North by the northern and eastern Calhoun County lines; the northern and eastern Jersey County lines; the northern Madison County line; the western Montgomery County line north to a point on this line that intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines.

Effective April 26, 1999, North Dakota's present geographic area is amended to include the area formerly assigned to Southern Illinois as described above. North Dakota's designation to provide official inspection services ends March 31, 2002. Official services in Illinois may be obtained by contacting North Dakota d.b.a. Illinois Official Grain Inspection at 618-632-1921.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 4, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99-11978 Filed 5-12-99; 8:45 am]

BILLING CODE 3410-KD-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-802]

Procedures for Delivery of HEU Natural Uranium Component in the United States

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Request for Comments.

SUMMARY: The Department of Commerce is hereby providing interested parties an opportunity to comment on the latest draft Revision of the Procedures for Delivery of HEU Natural Uranium Component in the United States. All comments are due, by close of business, to the Department of Commerce seven (7) days from the date of publication of this notice.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT:

James C. Doyle, Karla Whalen, or Juanita H. Chen, Enforcement Group III, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401

Constitution Avenue, NW, Washington, DC 20230, at telephone: 202-482-3793.

Background

As set forth in the USEC Privatization Act, the Department of Commerce ("the Department") has the responsibility for the administration and enforcement of the HEU Agreement. Pursuant to this Act, the Department established the Procedures for Delivery of HEU Natural Uranium Component in the United States ("HEU Procedures") (63 FR 36391, July 6, 1998) to enforce the USEC Privatization Act mandate. After requesting comments from parties on necessary or desirable changes to the HEU Procedures (63 FR 54108, October 8, 1998), the Department determined that revision and clarification of the HEU Procedures were warranted. Revised HEU Procedures were published on March 26, 1999, and parties were again invited to comment on necessary or desirable changes (64 FR 14697, March 26, 1999). As the Department has made substantive changes, in part as a result of parties' comments, the Department has determined that comments on this latest revision of the HEU Procedures are again appropriate.

Opportunity to Submit Comments

Parties wishing to comment on this latest revision of the HEU Procedures have the opportunity to participate on the record. Parties may submit comments with respect to these revised HEU Procedures by close of business seven (7) days from publication of this notice. Seven copies of the comments should be submitted to: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, Attention: Roland L. MacDonald.

All comments provided to the Department in response to this notice will be subject to release under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, *et seq.* (1998).

Dated: May 7, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

Draft Revised Procedures for Delivery of HEU Natural Uranium Component in the United States

The United States Enrichment Corporation Privatization Legislation, 42 U.S.C. 2297h, *et seq.* ("USEC Privatization Act"), directs the Secretary of Commerce to administer and enforce Russian origin uranium delivery limitations set forth in 42 U.S.C. 2297h-10(b)(5). Accordingly, the U.S.

Department of Commerce ("Department") is implementing § 2297h-10 of the USEC Privatization Act by issuing these revised HEU Procedures. The authority to implement the HEU Procedures does not derive from the Tariff Act of 1930, as amended. Therefore, these revised HEU Procedures are not subject to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation ("Russian Suspension Agreement"), 57 FR 79235 (October 30, 1992), as amended.

A. Coverage

The uranium covered by these revised HEU Procedures is the U_3O_8 or UF_6 component of the low-enriched uranium derived from the highly enriched uranium ("HEU") taken from dismantled nuclear warheads, deemed under United States law for all purposes to be of Russian origin, and delivered to the Russian Executive Agent pursuant to the USEC Privatization Act ("HEU Natural Uranium Component").

B. Definitions

1. Account Administrator—means the party that administers an account into which the Russian Executive Agent or a Designated Agent takes delivery of, and provides account balance information for, the HEU Natural Uranium Component prior to its sale pursuant to the USEC Privatization Act.

2. Annual Maximum Deliveries—means the delivery limitations to End-Users as set forth at 42 U.S.C. 2297h-10(b)(5):

ANNUAL MAXIMUM DELIVERIES TO END-USERS	
Year:	(Millions lbs. U_3O_8 equiv- alent)
1998	2
1999	4
2000	6
2001	8
2002	10
2003	12
2004	14
2005	16
2006	17
2007	18
2008	19
2009 and each year thereafter	20

3. Consumption—means for use as nuclear fuel.

4. Designated Agent—means any party that has been authorized by the Ministry of Atomic Energy of the Russian Federation ("MINATOM") to

sell the HEU Natural Uranium Component.

5. Designated Agent's Account—means the account held in the name of the Designated Agent, into which only the HEU Natural Uranium Component is delivered prior to its transfer pursuant to the USEC Privatization Act.

6. End-User—means an entity that purchases natural uranium for consumption in a nuclear reactor in the United States, owned or operated by itself or a parent, subsidiary, or other entity under common ownership or control.

7. Executive Agent—means either the United States or Russian Federation executive agent with the authority to implement the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 19, 1993.

8. Secretary—means the Secretary of Commerce or a designee. The Secretary has responsibility for the administration and enforcement of the limitations set forth in 42 U.S.C. 2297h-10(b)(5).

9. U_3O_8 to (UF_6 Conversion)—1 KgU in UF_6 2.61283 lbs. U_3O_8

10. Verification—The process by which the Department examines the records of the party that provided the information being examined, and interviews company personnel who prepared such information and who are familiar with the sources of the data in the information, in order to establish the adequacy and accuracy of submitted information.

11. Importer of Record—means the person by whom, or for whose account, subject merchandise is imported.

C. Record Procedures and Commercial Confidentiality

1. Public Record and Access

a. HEU Record: A separate record for documents and information generated under the HEU Procedures shall be created under the identifying title "HEU File" and maintained in the Central Records Unit.

b. Central Records Unit: Import Administration's Central Records Unit is located at B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230. The office hours of the Central Records Unit are between 8:30 A.M. and 5:00 P.M. on business days.

c. The Central Records Unit is responsible for maintaining a public and an official record for the HEU File. The public record will consist of all material contained in the official record that the Secretary determines is subject to

release under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, et seq. (1998), and disclosed to the general public in the Central Records Unit. The Secretary will charge an appropriate fee for providing copies of documents. The official record will contain the foregoing information and information for which the submitter has claimed an exemption to release under FOIA. Such official record will be accessible only to authorized Commerce Department employees.

d. FOIA Release and Treatment of Commercial and Financial Information: Documents submitted to the Department are fully releasable under FOIA, unless a party claims protection from release under a FOIA exemption. A party making a submission may not claim its own identity as protected from release under FOIA. In order to claim protection from release, a party must specify the appropriate exemption applicable to the information which the party seeks to protect from release, and bracket such information. See § 4.7 of the Department's FOIA regulations, set forth in 15 C.F.R. part 4 (1998). If the information in the submission is protected from release under an exemption to FOIA, the party submitting such documentation may provide a releasable public version along with the non-releasable version. Further information on FOIA may be accessed at <http://www.usdoj.gov/foia>.

e. Interim Record: The Department will create the public record of the HEU File. Within 90 days from publication of the final revised HEU Procedures, the Department will provide to parties that have already submitted information to the Department, pursuant to the January 7, 1998 HEU Procedures, the opportunity to claim that documents are exempt from release under FOIA and to create releasable versions of said documents. The Department will also transfer any documentation relating to the HEU Procedures from the record for the Russian Suspension Agreement (A-821-802) to the HEU File, or will return such documentation to the submitter, as appropriate.

2. Record Submission Instructions

a. Where to file: For the Department to consider a submission to the record, persons must address and submit all documents to: The Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Submissions may be made between 8:30 AM and 5:00 PM on business days. Courtesy copies addressed to the appropriate employee, and designating

the employee's mail stop room number, may be delivered to Room 1874 (Courier Delivery Entrance).

b. Required Header Information: Any submission made to the HEU File must contain the following information in the upper right hand corner of the document in the order presented below:

HEU File

Number of Pages

Fully Releasable under FOIA, or, Not Fully Releasable under FOIA

Attn: Uranium Program, Room 7866

c. Number of Copies: Each submission to the Department must be accompanied by three copies of the submission. Where claim of exemption from release under FOIA is made, the specific portion(s) of the submission for which exemption is claimed must be clearly identified when the submission is made. Upon receipt, the Central Records Unit will stamp the official date of filing on the submission.

D. Allocation of Annual Maximum Deliveries to End-Users

The Department recognizes that MINATOM may allocate the Annual Maximum Deliveries of HEU Natural Uranium Component among any Designated Agent(s) which it authorizes to sell the HEU Natural Uranium Component. For each Designated Agent receiving a delivery allocation, MINATOM will issue a certificate identifying such Designated Agent, the duration of time for which the allocation is valid, and the maximum annual amount to be delivered under that certificate. The certificate(s) will also contain a statement that the material to be delivered to the Designated Agent may be sold in the United States in accordance with 42 U.S. C. 2297h-10. No such certificate shall be valid and effective until such time as the Department receives a copy of such certificate. The cumulative quantities authorized by all such certificates for each year may not exceed the Annual Maximum Deliveries for such year.

E. Re-allocation

Annual deliveries allocated to a Designated Agent may be re-allocated to any other Designated Agent or to MINATOM within the same annual period subject to the Annual Maximum Deliveries, provided that MINATOM submits to the Department a copy of the amended and/or terminated certificate(s) from which annual delivery allocation is to be withdrawn and a copy of the new certificate(s) re-allocating annual delivery allocation.

F. Delivery Forfeit and Flexibility

On December 31 of each year, any portion of the Annual Maximum Deliveries not delivered in that year will be forfeited. In the unlikely event that there are transfer, transportation, or other difficulties beyond the control of the Designated Agent, the Department may provide for a 30 day grace period to complete the delivery. The Department must be notified in writing of a request for a 30 day grace period, detailing the reasons for the delivery delay.

G. Swaps, Exchanges, Loans, or Resales of Material

1. Swaps, Exchanges or Loans: Swaps, exchanges or loans of HEU Natural Uranium Component may be conducted solely for the purpose of facilitating delivery, further processing, and end-use as nuclear fuel. Notification of such permitted swaps, exchanges, or loans is required to be provided to the Department at the time of the transactions, in the format set forth in Attachment One; however, no prior approval by the Department is required to proceed. Examples of such permitted swaps, exchanges, or loans are those designed to avoid transportation costs. The Department considers swaps, exchanges, or loans that will result in sales for Consumption in the United States, directly or indirectly, in excess of the Annual Maximum Deliveries to be circumvention. Swaps, exchanges or loans are subject to verification by the Department at any time and at its discretion.

2. Resale.

a. The Department will permit End-Users to resell the HEU Natural Uranium Component. If the HEU Natural Uranium Component is resold, the End-User (or any other entity) making the resale must notify the Department of the date of the resale, the entity to whom it was sold, and the volume resold, in the format provided in Attachment One; however, no prior approval by the Department is required to proceed.

b. If an End-User resells the HEU Natural Uranium Component to any party other than another End-User, the material must be held in a separate account and quarterly reports on the account balance, in the format provided in Attachment Two, are required from the purchaser of the resold material. The material must be tracked in a separate account, and quarterly reports on the account balance must be provided for all subsequent resales except those to an End-User.

c. An End-User may purchase HEU Natural Uranium Component on re-sale

only from another End-User or an entity utilizing a separate account and providing quarterly reports to the Department as noted in Paragraph H.2.b. above.

d. Resales remain subject to the requirements of § 2297h-10 of the USEC Privatization Act, these HEU Procedures, and are also subject to verification by the Department at any time and at its discretion.

H. Post-Delivery Notification

For all deliveries of HEU Natural Uranium Component, Designated Agents must submit to the Department, within ten (10) days of receipt, copies of all delivery confirmations provided to the Designated Agents from the appropriate Account Administrator. Such confirmations must contain the identity of the account holders from and to which the material was transferred, the quantity transferred, the contract number pursuant to which such delivery is made, and the date of delivery.

I. Quarterly Reports

1. Designated Agents

Designated Agents must submit for the HEU File quarterly reports and certifications detailing all activity relating to the movement of HEU Natural Uranium Component into and out of their respective accounts, in the format set forth in Attachment Two. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters ending March 31, June 30, September 30, and December 31, respectively.

2. Account Administrators

Account Administrators must submit quarterly reports regarding the accounts holding the HEU Natural Uranium Component, in the format set forth in Attachment Three. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters ending March 31, June 30, September 30, and December 31, respectively.

J. Verification

The Department reserves the right to verify any information submitted to the Department relating to deliveries under the USEC Privatization Act. Furthermore, the Department may restrict future deliveries from any account in which the reported activity is found to be in violation of these revised HEU Procedures and/or the Annual Maximum Deliveries if such violations are not rectified to the satisfaction of the Department and MINATOM.

K. Consultations

Upon request, MINATOM and the Department will hold consultations subsequent to the filing of the quarterly reports due February 1 of each year for the purpose of exchanging/reviewing all data pertaining to deliveries of HEU Natural Uranium Component under these revised HEU Procedures during the previous year. Consultations may be held at other times as necessary.

L. Re-Importation Requirements ¹

1. HEU Natural Uranium Component previously sold to an End-User, exported from the United States for further processing, and subsequently re-imported:

The End-user or its agent must submit a notification letter and certifications as set forth in Attachment Four.

2. HEU Natural Uranium Component sold for delivery outside the territory of the United States to an End-User and subsequently imported to be consumed by an End-User in accordance with Annual Maximum Delivery Limitations:

The End-User or its agent must submit a notification letter and certifications as set forth in Attachment Four.

3. HEU Natural Uranium Component sold for consumption outside the United States to be imported into the United States for further processing and exportation:

The entity or importer of record must provide the information set forth in Attachment Five. In addition, the owner of this material must certify to the Department that the material will not be swapped, exchanged, or loaned while in the United States and that it will not (and has not) circumvented the Annual Maximum Delivery Limitations. The owner must also provide the Department with the expected quantity (U₃O₈ equivalent, less any processing losses) that will be exported from the United States. There shall be no time or quantity limitations on the import of HEU Natural Uranium Component under this provision.

4. In all cases noted above, the owner of the HEU Natural Uranium Component or its agent must provide the Department with the required information ten (10) days prior to its expected entry into the United States. Within ten (10) days of receipt of the required information, the Department shall provide the United States Customs Service with the appropriate instructions to clear this shipment. The Department will notify the importer of record of the issuance of such instructions.

M. Enforcement

If the Department finds that a Designated Agent has directly or indirectly exceeded its delivery allocation, the Department will require

the Account Administrator or the appropriate entity to withhold any further release of HEU Natural Uranium Component from the Designated Agent's Account, until the issue has been satisfactorily resolved among the Department, MINATOM, and the relevant Designated Agent. The Department will notify both the Account Administrator and the affected Designated Agent in writing of its enforcement action.

N. Future Revisions

Any future revisions to these HEU Procedures will be made only after public notice in the **Federal Register** and an opportunity for interested party comment.

Attachment One—Swaps, Exchanges, Loans, and Resales Notification Format

For each swap, exchange, loan, or resale under a provision of the HEU Procedures, provide the following information to the Department:

- 1. The quantity and origin(s) of the material.
- 2. The location(s) of the transaction.
- 3. The parties involved in the transaction.
- 4. The purpose of the transaction.

Attachment Two ² Designated Agent Quarterly Report Form

Quarterly Delivery Report for (INSERT DATES AND DESIGNATED AGENT) HEU Natural Uranium Component
Beginning Balance (in U₃O₈ equivalent): ____

Transaction date	Delivered from	Delivered to	Quantity (in UF ₆ and U ₃ O ₈ equivalent)	Transaction description	Comments

Ending Balance (in U₃O₈ equivalent): ____
(DESIGNATED AGENT) certifies that it holds an HEU Natural Uranium Component account at (STATE NAME OF ENTITY(IES)) and that all HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar quarter (INDICATE DATES) has been transferred for one of the following reasons: (1) for use under an approved matched sale under 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act and Article IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended; (2) for use in overfeeding in U.S. enrichment facilities pursuant to 42 U.S.C. § 2297h-10(b)(7); (3) for delivery to a United States End-User for

Consumption, within the Annual Maximum Deliveries set forth in the USEC Privatization Act, at 42 U.S.C. § 2297h-10(b)(5); (4) for export out of the United States; or (5) for further processing on behalf of (NAME OF ENTITY).
(DESIGNATED AGENT) further certifies that, for the time period in which the material was in its possession or control, none of the HEU Natural Uranium Component transferred from or into the account(s) during the calendar quarter (INDICATE DATES) has been loaned, swapped, exchanged or used in any arrangement that directly or indirectly circumvents the limitations set forth in 42 U.S.C. § 2297h-10(b)(5) of the USEC Privatization Act, the Agreement Suspending

the Antidumping Investigation on Uranium from the Russian Federation, as amended, or the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Signature: _____
Printed Name: _____
Title: _____

Attachment Three—Account Administrator Quarterly Report Form

Quarterly Report for (INSERT DATES AND ACCOUNT ADMINISTRATOR) HEU Natural Uranium Component
Beginning Balance (in U₃O₈ equivalent): ____

¹ The certifications required under this Paragraph are independent of the general importer certification requirements of the Agreements Suspending the Antidumping Duty Investigations on Uranium, as amended ("the Agreements"). Certification number 3 on Attachment Four (page two) and certification numbers 2 and 4 on

Attachment Five (page two) will continue to be required only to the extent they are applicable. At such a time when the Agreements are no longer in existence, the certifications required under this Paragraph will be amended to reflect the absence of the Agreements.

² The Department will amend this certification to reflect changes, if any, in the existence of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation.

Transaction date	Delivered from	Delivered to	Quantity (in UF ₆ and U ₃ O ₈ equivalent)	Transaction description	Comments

Ending Balance (in U₃O₈ equivalent): _____
 (ACCOUNT ADMINISTRATOR) certifies that to the best of its knowledge, the foregoing information is true and correct.
 Signature: _____
 Printed Name: _____
 Title: _____

Attachment Four (Page One)—Re-importation Notification Form and Certifications

TOPIC: Re-importation of Uranium under 42 U.S.C. § 2297h-10(b)(5) of the USEC Privatization Act.

Pursuant to Paragraph L of the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, we hereby submit information describing the re-importation of Russian origin uranium subject to the delivery limitations set forth in the USEC Privatization Act, at 42 U.S.C. § 2297h-10(b)(5):

Export:

2. Quantity of HEU Natural Uranium Component (U₃O₈ equivalent) exported out of U.S.:

3. Date of Export out of U.S. (if available):

Re-Importation:

1. (NUMBER) lbs. of U₃O₈ equivalent contained in (NUMBER) KgU with enrichment assay (NUMBER) wt % and tails assay (NUMBER) wt %, as applicable:

2. Port of Re-Importation:

3. Importer of Record:

4. Planned Date of Re-Importation:

5. End User:

6. Vessel/Airline Name:

Also, please find attached the importer of record declaration regarding country of origin, anti-circumvention and qualification of this material under 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act. We also agree to verification of this information if requested.

Attachment Four (Page Two)—Importation Notification Form and Certifications

Certifications To U.S. Customs Service

1. (END-USER or IMPORTER OF RECORD) hereby certifies that the HEU Natural Uranium Component of the uranium being imported into the United States is derived from Russian highly enriched uranium pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons. The uranium being imported was converted in (INSERT COUNTRY), and/or enriched in (INSERT COUNTRY) and/or fabricated in (INSERT COUNTRY)

2. (END-USER or IMPORTER OF RECORD) hereby certifies that the material being

imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent the delivery limitations set forth in 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act, 42 U.S.C. § 2297h, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

3. (END-USER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

4. (END-USER or IMPORTER OF RECORD) hereby certifies that the uranium being imported into the United States is for consumption in the United States and is in compliance with 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act, 42 U.S.C. § 2297h, *et seq.* The material being imported represents (NUMBER) lbs. U₃O₈ equivalent of (NUMBER) lbs. U₃O₈ equivalent exported for further processing on (DATE) or delivered to an End-User outside the United States.

Signature: _____

Printed Name: _____

Title: _____

Attachment Five (Page One)—Importation Notification Form and Certifications

TOPIC: Importation of Uranium under 42 U.S.C. § 2297h-10(b)(5) of the USEC Privatization Act—Consumption Outside the United States.

Pursuant to Paragraph L of the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, we hereby submit information describing our scheduled importation of Russian origin uranium into the United States for subsequent export:

1. Scheduled Date of Re-importation:

2. (NUMBER) lbs. Of U₃O₈ in (NUMBER) KgU with enrichment assay (NUMBER) wt % and tails assay (NUMBER) wt % (if applicable):

3. Port of Re-importation:

4. Importer of Record:

5. Vessel/Airline:

6. Parties Providing Further Processing and/or storage:

7. Anticipated Date of Export out of U.S. (if available):

8. End-User:

Also, please find attached the importer of record declaration regarding country of origin, anticircumvention, and qualification of the material under 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act. We also agree to verification of this information if requested.

Attachment Five (Page Two)—Importation Notification Form and Certifications

Certifications To U.S. Customs Service

1. (OWNER or IMPORTER OF RECORD) hereby certifies that the HEU Natural Uranium Component of the uranium being imported into the United States is derived from Russian highly enriched uranium pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons. The uranium being imported was converted in (INSERT COUNTRY), and/or enriched in (INSERT COUNTRY), and/or fabricated in (INSERT COUNTRY) and is not intended for consumption in the United States.

2. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended

3. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent the delivery limitations set forth in 42 U.S.C. § 2297h-10(b)(5) of the USEC Privatization Act, 42 U.S.C. § 2297H, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Further, the material being imported will not be swapped, exchanged, or loaned or otherwise used in any other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

Further, the material being imported will not be swapped, exchanged, or loaned or otherwise used in any other transaction designed to circumvent or the delivery limitations set forth in 42 U.S.C. § 2297h-10(b)(5) of the USEC Privatization Act, 42 U.S.C. § 2297h, *et seq.* and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Signature: _____

Printed Name: _____

Title: _____

[FR Doc. 99-12155 Filed 5-12-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050799C]

Proposed Agency Information Collection; Certified Observer Contractors of the North Pacific

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 12, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/ AK01, NOAA National Marine Fisheries Service (NMFS), Sustainable Fisheries Division, P.O. Box 21668, Juneau, Alaska 99802, telephone (907) 586-7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

NMFS is requesting renewal of OMB approval of the information collection to support the Certified Observer Contractor Program. Information must be submitted by persons wishing to become certified observers or contractors who can then provide observer services to the groundfish fisheries in the Gulf of Alaska and the Bering Sea-Aleutian Islands management areas. Certified contractors and observers must submit additional information as part of the on-going observer process.

II. Method of Collection

Respondents would comply with requirements set forth in 50 CFR part 679.

III. Data

OMB Number: 0648-0318.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Contractor business.

Estimated Number of Respondents: 540.

Estimated Time Per Response: The response times for this proposed information collection are 60 hours per application to be certified as a contractor; 3 minutes to supply a certificate of insurance; 7 minutes to register for training, briefing, or debriefing; 2 minutes submit a notification of an observer's physical examination; 2 hours for an observer's actual physical examination; 7 minutes for observer assignment information; 7 minutes for weekly deployment/logistics reports; 15 minutes to provide copies of contracts; 2 hours to provide reports on observer harassment, observer safety concerns, or observer performance problems; 40 hours for appeals of suspension or decertification of a contractor; and 4 hours for appeals of suspension of decertification of an observer.

Estimated Total Annual Burden Hours: 2,106.

Estimated Total Annual Cost to Public: \$38,904.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 99-12115 Filed 5-12-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050599C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will meet in a work session which is open to the public.

DATES: The meeting will begin at 1 p.m. on Wednesday, June 2, 1999 and continue on Thursday, June 3, 1999 from approximately 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Council office in Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. John Coon, Salmon Management Coordinator; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and clarify the STT's internal administrative procedures, plan and begin work on an overfishing review assignment from the Council, review the problems encountered in the 1999 preseason salmon management process and make recommendations for improvements to the Council, assess STT work products and responsibilities with regard to meeting new requirements resulting from the Sustainable Fisheries Act and Amendment 14 to the salmon fishery management plan, and discuss other pertinent issues with regard to fulfilling STT technical and analytical responsibilities.

Although other issues not contained in this agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: May 6, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 99-12116 Filed 5-12-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050699C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications to modify permits (1094, 1144, 1136); issuance of permits (1122, 1173); and modifications to existing permits (899, 901, 902, 903, 998, 1141).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received applications for modifications to existing permits from: Washington Department of Fish and Wildlife in Olympia, WA (WDFW) (1094), Mr. Bruce D. Peery (BDP) (1144), and Oregon Cooperative Fish and Wildlife Research Unit in Corvallis, OR (OCFWRU) (1136); NMFS has issued permits to Mr. Cary Osterhaus, U.S. Bureau of Land Management (BLM) (1122), and Dr. Douglas DeHart, Oregon Department of Fish and Wildlife (ODFW) (1173); and NMFS has issued modifications to scientific research permits to: Oregon Department of Fish and Wildlife at Portland, OR (ODFW) (899), WDFW (901, 902), Idaho Department of Fish and Game at Boise, ID (IDFG) (903), the Shoshone-Bannock Tribes at Fort Hall, ID (SBT) (998), and Public Utility District Number 2 of Grant County in Ephrata, WA (PUD GC) (1141).

DATES: Written comments or requests for a public hearing on any of the new applications or modification requests must be received on or before June 14, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 899, 901, 902, 903, 998, 1094, 1122, 1136, 1141, 1173: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (503-230-5400).

For permit 1144: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301-713-1401).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401).

FOR FURTHER INFORMATION CONTACT:

For permit 1144: Terri Jordan, Silver Spring, MD (301-713-1401).

For permits 998, 1094, 1136: Leslie Schaeffer, Portland, OR (503-230-5433).

For permits 899, 901, 902, 903: Robert Koch, Portland, OR (503-230-5424).

For permits 1122, 1141, 1173: Tom Lichatowich, Portland, OR (503-230-5438).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas*), Loggerhead turtle (*Caretta caretta*).

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): Snake River (SnR) fall,

SnR spring/summer, upper Columbia River (UCR) spring.

Coho salmon (*Oncorhynchus kisutch*): Southern Oregon/Northern California Coast (SONCC).

Cutthroat trout (*Oncorhynchus clarki*): Umpqua River (UmR).

Sockeye salmon (*Oncorhynchus nerka*): SnR.

Steelhead trout (*Oncorhynchus mykiss*): UCR.

Modification Requests Received

WDFW requests a modification to scientific research/enhancement permit 1094. Permit 1094 authorizes WDFW an annual take of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with a hatchery supplementation program in the mid- to upper Columbia River Basin. Incidental takes of ESA-listed species resulting from WDFW hatchery operations and hatchery produced fish releases are also authorized by the permit. WDFW believes the artificial propagation of ESA-listed steelhead will benefit the species by enhancing the population, which is not currently able to naturally replace itself. For the modification, WDFW requests an increase in the annual take of adult, endangered, naturally produced and artificially propagated, UCR steelhead associated with scientific research designed to determine if hatchery fish survival is increased with the incorporation of wild brood stock at Wells Hatchery. Adult, endangered, naturally produced and artificially propagated, UCR steelhead are proposed to be captured, examined for marks, and released. ESA-listed adult fish indirect mortalities are also requested. The modification is requested to be valid for the duration of the permit, which expires on May 31, 2003.

BDP possesses a 1-year permit (1144) to sample for and collect green and loggerhead sea turtles in the Ft. Pierce Inlet for the purposes of stock assessment to characterize the sea turtles that utilize the southern Indian River Lagoon System, Florida. Captured turtles will be weighed, photographed, measured, tagged, and released. BDP is requesting an increase in the authorized take of green sea turtles from 75 to 100 animals. This increase in take is necessitated by the collection of more green turtles than expected during the previous permit period.

On April 26, 1999, notice was published (64 FR 20266) that NMFS had received a modification request for permit 1136. Permit 1136 authorizes OCFWRU annual direct takes of juvenile, endangered, SnR sockeye

salmon; juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile, threatened, SnR fall chinook salmon; and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with research designed to compare biological and physiological indices of wild and hatchery fish exposed to stress from bypass, collection, and transportation activities at dams on the Snake and Columbia Rivers in the Pacific Northwest. For the modification, OCFWRU is requesting annual takes of juvenile, endangered, naturally produced and artificially propagated, UCR spring chinook salmon associated with the research. NMFS has received an amended modification request seeking an increase in the annual take of juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon and juvenile, endangered, naturally produced, UCR steelhead associated with the research. The additional take is requested because annual take estimates were not recalculated using the expected increased abundance of some species in 1999. The modification is requested to be valid for the duration of the permit, which expires on December 31, 2000.

Permits and Modifications Issued

Notice was published on June 10, 1998 (63 FR 31739), that an application had been filed by ODFW for a modification to incidental take permit 899. Permit 899 authorizes ODFW annual incidental takes of endangered SnR sockeye salmon; threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and threatened SnR fall chinook salmon associated with the operation of and releases from the non-listed anadromous fish hatchery programs in the state of Oregon. Modification 1 to permit 899 was issued on April 8, 1999, and authorizes annual incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of and releases from the non-listed anadromous fish hatchery programs. Modification 1 is valid for the duration of the permit, which expires on December 31, 1999.

Notice was published on October 15, 1997 (62 FR 53596), that an application had been filed by WDFW for modifications to incidental take permit 901. Permit 901 authorizes WDFW annual incidental takes of endangered SnR sockeye salmon; threatened, naturally produced and artificially propagated, SnR spring/summer

chinook salmon; and threatened SnR fall chinook salmon associated with the operation of and releases from the non-listed anadromous fish hatchery programs in the state of Washington. Modification 1 to permit 901 was issued on April 8, 1999, and authorizes annual incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of and releases from the non-listed anadromous fish hatchery programs. The modification is valid for the duration of the permit, which expires on December 31, 1999.

Notice was published on June 10, 1998 (63 FR 31739), that an application had been filed by WDFW for modifications to incidental take permit 902. Permit 902 authorizes WDFW annual incidental takes of endangered SnR sockeye salmon; threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and threatened SnR fall chinook salmon associated with the operation of and releases from the non-listed anadromous fish hatchery programs in the state of Washington. Modification 1 to permit 902 was issued to WDFW on April 8, 1999, and authorizes annual incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of and releases from the non-listed anadromous fish hatchery programs. The modification is valid for the duration of the permit, which expires on December 31, 1999.

Notice was published on June 10, 1998 (63 FR 31739), that an application had been filed by IDFG for modifications to incidental take permit 903. Permit 903 authorizes IDFG annual incidental takes of endangered SnR sockeye salmon; threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and threatened SnR fall chinook salmon associated with the operation of and releases from the non-listed anadromous fish hatchery programs in the state of Idaho. Modification 1 to permit 903 was issued to IDFG on April 8, 1999, and authorizes annual incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of and releases from the non-listed anadromous fish hatchery programs. Modification 1 is valid for the duration of the permit, which expires on December 31, 1999.

Notice was published on February 11, 1999 (64 FR 6880), that an application had been filed by the SBT for modifications to scientific research permit 998. Permit 998 authorizes the SBT annual direct takes of juvenile,

endangered, SnR sockeye salmon and juvenile, threatened, naturally produced, SnR spring/summer chinook salmon associated with a study designed to evaluate smolt outmigration from Pettit and Alturas Lakes in ID. Modification 2 to permit 998 was issued to the SBT on April 28, 1999, and authorizes an increase in the annual direct take of juvenile, endangered, SnR sockeye salmon associated with a mark/recapture study. An associated increase in juvenile sockeye salmon indirect mortalities is also authorized. Modification 2 is valid for the duration of the permit, which expires on December 31, 2000.

Notice was published on March 6, 1998 (63 FR 11220), and December 21, 1998 (63 FR 70393), that BLM had applied for a scientific research permit. Permit 1122 was issued on April 30, 1999, authorizing take of listed species. Permit 1122 expires December 31, 2002, and authorizes annual direct takes of adult and juvenile, endangered, UmR cutthroat trout and juvenile, threatened, SONCC coho salmon associated with scientific research. The purpose of the research is to determine the sub-basin contributions to the migratory population of UmR cutthroat trout and to determine the survival and abundance of juvenile SONCC coho salmon. This information will benefit wild populations by identifying important habitat areas where restoration efforts have had the most beneficial impact. BLM will use screw traps to estimate fish abundance in selected sub-basins and will apply radiotransmitters to juvenile UmR cutthroat trout in tributaries of the UmR. The U.S. Forest Service of Tiller, OR (USFS) is authorized to act as an agent of BLM and participate in the research activities. ODFW is authorized to act as an agent to receive and store UmR cutthroat trout and SONCC coho salmon indirect mortalities recovered by BLM and USFS.

Notice was published on March 25, 1999 (64 FR 14432), that an application had been filed by PUD GC for modifications to permit 1141. Permit 1141 authorizes annual direct takes of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with a fish salvage operation and two scientific research studies at Wanapum and Priest Rapids Dams located on the Columbia River. Modification 1 to permit 1141 was issued on May 5, 1999, and authorizes annual takes of adult and juvenile UCR spring chinook salmon associated with PUD GC's previous activities. Modification 1 also authorizes takes of adult and juvenile, endangered,

naturally produced and artificially propagated, UCR steelhead and adult and juvenile UCR spring chinook salmon associated with two additional research studies. Modification 1 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on August 3, 1998 (63 FR 41230), that ODFW had applied for a scientific research permit. Permit 1173 was issued on April 30, 1999, and authorizes annual direct takes of adult and juvenile, endangered, UmR cutthroat trout associated with a broad-base sampling program. ESA-listed fish will be captured, examined, marked, and released. Traps, electrofishing, and hook/line techniques will be used to capture the fish. Fin clips as well as passive integrated transponders (PIT) will be used to mark and monitor their migrations. Fish will also be observed by snorkeling and routine stream surveys. Data will be used to expand current knowledge about cutthroat trout distribution, migration patterns and population densities. Permit 1173 expires on December 31, 2003.

Dated: May 7, 1999.

Margaret Lorenz,

Acting Chief, Endangered Species Division,
Office of Protected Resources, National
Marine Fisheries Service.

[FR Doc. 99-12117 Filed 5-12-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043099A]

Marine Mammals; File No. 731-1509-00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Robin W. Baird, Ph.D., C201-2747 S. Kihei Road, Kihei, Hawaii 96753, has applied in due form for a permit to take several species of marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 14, 1999.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should

set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant is requesting to harass the species of cetaceans listed here during the course of photo-identification, behavioral research, and tagging (using suction-cup attached tags) of several species of cetaceans in U.S. waters of the Pacific Ocean (including Hawaii, California, Oregon, Washington, and Alaska) as well as international waters (particularly the Mediterranean). Incidental harassment of all species of cetaceans may occur through vessel approach, photographic identification and behavioral research. The research will be carried out over a 5-year period. The research will focus primarily on diving and night-time behavior, as well as population estimation, social organization and inter-specific interactions.

The following species may be taken by harassment during the course of the research: Northern right whale (*Eubalaena glacialis*), Minke whale (*Balaenoptera acutorostrata*), Sei whale (*Balaenoptera borealis*), Bryde's whale (*Balaenoptera edeni*), Blue whale (*Balaenoptera musculus*), Finback whale (*Balaenoptera physalus*), Humpback whale (*Megaptera novaeangliae*), Gray whale (*Eschrichtius robustus*), Short-beaked common dolphin (*Delphinus delphis*), Long-beaked common dolphin (*Delphinus capensis*), Pygmy killer whale (*Feresa attenuata*), Short-finned pilot whale (*Globicephala macrorhynchus*), Risso's dolphin (*Grampus griseus*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Northern right whale dolphin (*Lissodelphis borealis*), Killer whale (*Orcinus orca*), Melon-headed

whale (*Peponocephala electra*), False killer whale (*Pseudorca crassidens*), Pantropical spotted dolphin (*Stenella attenuata*), Striped dolphin (*Stenella coeruleoalba*), Spinner dolphin (*Stenella longirostris*), Rough-toothed dolphin (*Steno bredanensis*), Bottlenose dolphin (*Tursiops truncatus*), Harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), Pygmy sperm whale (*Kogia breviceps*), Dwarf sperm whale (*Kogia simus*), Sperm whale (*Physeter macrocephalus*), Baird's beaked whale (*Berardius bairdii*), Bottlenose whale (*Hyperoodon sp.*), Hubbs' beaked whale (*Mesoplodon carlhubbsi*), Blainville's beaked whale (*Mesoplodon densirostris*), Ginkgo-toothed whale (*Mesoplodon ginkgodens*), Hector's beaked whale (*Mesoplodon hectori*), Stejneger's beaked whale (*Mesoplodon stejnegeri*), Cuvier's beaked whale (*Ziphius cavirostris*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0070 (206/526-6426);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4027);

Protected Species Program Manager, Pacific Islands Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822-2941 (808/973-2987); and

Regional Administrator, Alaska Region, NMFS, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586-7235).

Dated: May 6, 1999.

Ann D. Terbush,

*Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. 99-12118 Filed 5-12-99; 8:45 am]

BILLING CODE 3510-22-F

**COMMITTEE FOR THE
IMPLEMENTATION OF TEXTILE
AGREEMENTS**

**Adjustment of Import Limits for Certain
Cotton, Wool and Man-Made Fiber
Textile Products Produced or
Manufactured in the Dominican
Republic**

May 6, 1999.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Issuing a directive to the
Commissioner of Customs adjusting
limits.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT:
Naomi Freeman, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 482-4212. For information on the
quota status of these limits, refer to the
Quota Status Reports posted on the
bulletin boards of each Customs port,
call (202) 927-5850, or refer to the U.S.
Customs website at <http://www.customs.ustras.gov>. For
information on embargoes and quota re-
openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural
Act of 1956, as amended (7 U.S.C. 1854);
Executive Order 11651 of March 3, 1972, as
amended.

The current limits for certain
categories are being adjusted for swing
and special shift.

A description of the textile and
apparel categories in terms of HTS
numbers is available in the
CORRELATION: Textile and Apparel
Categories with the Harmonized Tariff
Schedule of the United States (see
Federal Register notice 63 FR 71096,
published on December 23, 1998). Also
see 63 FR 63297, published on
November 12, 1998.

Troy H. Cribb,

*Chairman, Committee for the Implementation
of Textile Agreements.*

**Committee for the Implementation of Textile
Agreements**

May 6, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229.

Dear Commissioner: This directive
amends, but does not cancel, the directive
issued to you on November 5, 1998, by the
Chairman, Committee for the Implementation
of Textile Agreements. That directive
concerns imports of certain cotton, wool and
man-made fiber textile products, produced or
manufactured in the Dominican Republic
and exported during the twelve-month
period which began on January 1, 1999 and
extends through December 31, 1999.

Effective on May 13, 1999, you are directed
to adjust the current limits for the following
categories, as provided for under the Uruguay
Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
338/638	908,151 dozen.
339/639	1,272,761 dozen.
340/640	1,054,856 dozen.
342/642	475,053 dozen
347/348/647/648	2,508,276 dozen of which not more than 1,238,434 dozen shall be in Cat- egories 647/648.
433	23,631 dozen.
442	80,129 dozen.

¹ The limits have not been adjusted to ac-
count for any imports exported after December
31, 1998.

The Committee for the Implementation of
Textile Agreements has determined that
these actions fall within the foreign affairs
exception of the rulemaking provisions of 5
U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation
of Textile Agreements.*

[FR Doc. 99-12102 Filed 5-12-99; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

**Submission for OMB Review;
Comment Request**

AGENCY: Department of Education.

SUMMARY: The Acting Leader,
Information Management Group, Office
of the Chief Information Officer invites
comments on the submission for OMB
review as required by the Paperwork
Reduction Act of 1995.

DATES: Interested persons are invited to
submit comments on or before June 14,
1999.

ADDRESSES: Written comments should
be addressed to the Office of
Information and Regulatory Affairs,
Attention: Danny Werfel, Desk Officer,
Department of Education, Office of
Management and Budget, 725 17th
Street, N.W., Room 10235, New
Executive Office Building, Washington,
D.C. 20503 or should be electronically
mailed to the internet address
DWERFEL@OMB.EOP.GOV. Requests

for copies of the proposed information
collection requests should be addressed
to Patrick J. Sherrill, Department of
Education, 400 Maryland Avenue, S.W.,
Room 5624, Regional Office Building 3,
Washington, D.C. 20202-4651, or
should be electronically mailed to the
internet address Pat-Sherrill@ed.gov,
or should be faxed to 202-708-9346.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill (202) 708-8196.

Individuals who use a
telecommunications device for the deaf
(TDD) may call the Federal Information
Relay Service (FIRS) at 1-800-877-8339
between 8 a.m. and 8 p.m., Eastern time,
Monday through Friday.

SUPPLEMENTARY INFORMATION: Section
3506 of the Paperwork Reduction Act of
1995 (44 U.S.C. Chapter 35) requires
that the Office of Management and
Budget (OMB) provide interested
Federal agencies and the public an early
opportunity to comment on information
collection requests. OMB may amend or
waive the requirement for public
consultation to the extent that public
participation in the approval process
would defeat the purpose of the
information collection, violate State or
Federal law, or substantially interfere
with any agency's ability to perform its
statutory obligations. The Acting
Leader, Information Management
Group, Office of the Chief Information
Officer, publishes that notice containing
proposed information collection
requests prior to submission of these
requests to OMB. Each proposed
information collection, grouped by
office, contains the following: (1) Type
of review requested, e.g. new, revision,
extension, existing or reinstatement; (2)
Title; (3) Summary of the collection; (4)
Description of the need for, and
proposed use of, the information; (5)
Respondents and frequency of
collection; and (6) Reporting and/or
Recordkeeping burden. OMB invites
public comment at the address specified
above. Copies of the requests are
available from Patrick J. Sherrill at the
address specified above.

Dated: May 10, 1999.

William E. Burrow,

*Acting Leader, Information Management
Group, Office of the Chief Information Officer.*

*Office of Postsecondary Education
Type of Review: New.*

*Title: Graduate Assistance in Areas of
National Need (GAANN) Program
Assessment Instrument.*

Frequency: Annually.

*Affected Public: Not-for-profit
institutions.*

*Reporting and Recordkeeping Burden:
Responses: 225*

Burden Hours: 2,250

Abstract: This data collection is the basis of the GAANN Program Assessment, which will report on the status and accomplishments of the GAANN program as a whole. Results will be reported to the GAANN community and program staff and to the Secretary in order to respond to Government Performance and Results Act (GPRA) requirements.

The GPRA requires the Department to measure the outcomes of its programs, compare them to what was planned, and report on the results attained.

[FR Doc. 99-12156 Filed 5-12-99; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MG99-000 and MT99-19-11-000]

Pine Needle LNG Company, L.L.C.; Notice of Filing

May 7, 1999.

Take notice that on April 29, 1999, Pine Needle LNG Company, L.L.C. (Pine Needle) filed standards of conduct under Order Nos. 497 *et seq.*¹ Order Nos. 566 *et seq.*,² and Order No. 599.³

Pine Needle also submitted the following revised tariff sheets to

¹ Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986-1990 ¶ 30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986-1990 ¶ 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986-1990 ¶ 30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991-1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991-1996 ¶ 30,958 (December 4, 1992); Order No. 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,987 (December 23, 1993); Order No. 497-F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,996 (June 17, 1994).

² Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,997 (June 17, 1994); Order No. 566-A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566-B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

³ Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31064 (1998).

Original Volume No. 1 of Pine Needle's FERC Gas Tariff to become effective May 29, 1999:

Substitute Original Sheet No. 40
Substitute Original Sheet No. 90
Original Sheet No. 91

Pine Needle states that it has served copies of this filing to its affected customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 24, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-12110 Filed 5-12-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-449-000]

Tennessee Gas Pipeline Company; Notice of Application to Abandon

May 7, 1999.

Take notice that on May 3, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed under Section 7(b) of the Natural Gas Act, for authority to abandon, ownership interests in a segment of offshore pipeline designated as Line 823X-1000 along with associated riser and platform piping located in West Cameron Block 609B, Offshore Louisiana. This application is on file with the Commission and open to public inspection. The application may also be viewed on the web at www.ferc.fed.us. Call (202) 208-2222 for assistance.

Specifically, Tennessee proposes to abandon its 16.66% ownership interest in 1,200 feet of 12-inch pipeline

connecting Platform B of West Cameron Block 609 to an underwater tap in W.C. Block 617. Natural gas was transported through this pipeline for ultimate delivery onshore. Newfield Exploration (Newfield), the producer who owns the platform to which Line 823X-100 is connected, has advised Tennessee and Columbia Gulf Transmission Company (Columbia Gulf), the other holder of interest in the facilities, that it intends to abandon and remove the platform sometime before June 1999. Both Tennessee and Columbia Gulf have agreed to transfer their interest in the measuring equipment and risers located on the platform to Newfield. Newfield will then remove these facilities with the platform.

Any person desiring to be heard or make any protest with reference to said application should on or before May 14, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Tennessee to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99-12109 Filed 5-12-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2385-002 New York]

Finch, Pruyn and Company; Notice of Availability of Draft Environmental Assessment

May 7, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for relicensing of the Glens Falls Hydroelectric Project, located on the Hudson River in Warren and Saratoga Counties, New York, and has prepared a draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2-A, of the Commission's offices at 888 First Street, N.E., Washington, DC 20426. The DEA may also be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1-A, Washington, DC 20426. Please affix "Glens Falls Project No. 2385-002" to all comments. For further information, please contact Charles T. Raabe at (202) 219-2811.

David P. Boergers,

Secretary.

[FR Doc. 99-12108 Filed 5-12-99; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6342-2]

Proposed Settlement Agreement, Clean Air Act Petition for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, (the "Act"), this is a notice of a proposed settlement agreement, which the United States Environmental Protection Agency ("EPA") lodged with the United States Court of Appeals for the District of Columbia Circuit on April 28, 1999, in consolidated lawsuits filed by the Chemical Manufacturers Association, the Environmental Technology Council and the Hazardous Waste Management Association under section 307(b) the Act, 42 U.S.C. 7607(b) (*Chemical Manufacturers Association v Environmental Protection Agency*, Case No. 96-1305, Consolidated with Nos. 96-1306 and 96-1308). The consolidated lawsuit concerns requests for judicial review of the final rule entitled "National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations," 61FR 34,140 (July 1, 1996) ("OSWRO NESHAP"), promulgated by EPA. The Petitioners' primary contention is that there is significant overlap in terms of the facilities subject to the rule between the OSWRO NESHAP and subpart CC of the Resource Conservation and Recovery Act rules governing the operation of treatment, storage and disposal facilities and that, therefore, the two rules need to be consistent with one another. The proposed settlement agreement provides that EPA shall propose to amend the OSWRO NESHAP so as to substantially conform its requirements to those of subpart CC.

For a period of thirty (30) days following the date of publication of this document, you may submit written comments relating to the proposed settlement agreement if you were not named as a party to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement for the comments disclose facts of circumstances that indicate that such consent is appropriate the Act.

EPA lodged a copy of the proposed settlement agreement with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on April 28, 1999. You may also obtain a copy from Hyllis Cochran, Air and Radiation Law office (2344), Office of

General Counsel, U.S. Environmental Protection Agency, 401 M street, S.W., Washington, D.C. 20460. Send written comments to Richard H. Vetter, Office of General Counsel, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina 27711. Comments must arrive no later than June 14, 1999.

Dated: May 7, 1999

Lisa K. Friedman,

Acting General Counsel.

[FR Doc. 99-12165 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-M.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6341-8]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260-2740, or E-mail at "farmer.sandy@epa.gov", and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1601.04; Air Pollution Regulations for Outer Continental Shelf Activities: Reporting, Recordkeeping, and Testing Requirements; in 40 CFR part 55; was approved 03/02/99; OMB No. 2060-0249; expires 03/31/2002.

EPA ICR No. 0277.11; Application for New or Amended Pesticide Registration; in 40 CFR parts 152, 156 and 158; was approved 04/06/99; OMB No. 2070-0060; expires 04/30/2002.

EPA ICR No. 1602.03; Maximum Achievable Control Technology Standards Development under Title III (section 112) of the Clean Air Act Regulatory Development Program; was approved 04/26/99; OMB No. 2060-0239; expires 04/30/2002.

OMB's Comments Filed

EPA ICR No. 1893.01; Federal Emission Guidelines for Existing Municipal Solid Waste Landfills; in 40 CFR part 60, subpart WWW; OMB filed comments 03/12/99.

Extensions of Expiration Dates

EPA ICR No. 1292.04; Aftermarket Catalytic Converter Policy; OMB No. 2060-0135; on 02/08/99 OMB extended the expiration date through 05/31/99.

EPA ICR No. 0160.05; Application for Registration of Pesticide-Producing Establishments; Notification of Registration of Pesticide-Producing Establishments; Pesticide Report for Pesticide-Producing Establishments; OMB No. 2070-0078; in 40 CFR part 167; on 03/09/99 OMB extended the expiration date through 05/31/99.

EPA ICR No. 1054.06; Standard of Performance for Petroleum Refineries; OMB No. 2060-0022; in 40 CFR part 60, subpart J; on 03/17/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0969.04; Final Authorization for Hazardous Waste Management; OMB No. 2050-0041; in 40 CFR part 271, subpart A; on 03/17/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0152.05; Notice of Arrival of Pesticides and Devices; OMB No. 2070-0020; in 19 CFR 12.112; on 03/24/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 0940.15; Ambient Air Quality Surveillance Revision; OMB No. 2060-0084; in 40 CFR part 58; on 03/24/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0746.03; NSPS for Calciners and Dryers in Mineral Industries; OMB No. 2060-0251; in 40 CFR part 60, subpart UUU; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 1069.05; NSPS for Iron and Steel Plants: Basic Oxygen Process Furnaces; OMB No. 2060-0029; in 40 CFR part 60, subparts N and Na; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0982.05; NSPS for Metallic Mineral Processing Plants; OMB No. 2060-0016; in 40 CFR part 60, subpart LL; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 1500.03; National Estuary Program; OMB No. 2040-0138; in 40 CFR part 35; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0988.06; Water Quality Standards Regulation; OMB No. 2040-0049; in 40 CFR part 131; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0138.05; Modification of Secondary Treatment Requirement for Discharges into Marine Waters; OMB No. 2040-0088; in 40 CFR part 125, subpart G; on 03/25/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 0226.14; National Pollutant Elimination System Permit Application Requirements—Forms 2A and 2S (Final Rule); OMB No. 2040-0086; in 40 CFR parts 122 and 501; on 03/26/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 1842.01; Notice of Intent of Storm Water Discharges Associated with Construction Activity under an NPDES General Permit; OMB No. 2040-0188; in 40 CFR part 122; on 03/26/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0161.07; Purchaser Acknowledgement Statement for Unregistered Pesticides, Export Policy; OMB No. 2070-0027; in 40 CFR part 168; on 03/31/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0595.06; Notice of Pesticide Registration by States to Meet a Special Local Need (SLN) under FIFRA section 24(c); OMB No. 2070-0055; in 40 CFR part 162; on 03/31/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0922.05; Data Call-In for Special Review Chemicals; OMB No. 2070-0057; in 40 CFR part 158; on 03/31/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 0662.05; NSPS for VOC Equipment Leaks in the Synthetic Organic Chemical Manufacturing Industry (SOCMI); at 40 CFR part 60, subpart W; OMB No. 2060-0012; on 04/14/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 1710.02; Residential Lead-Based Paint Hazard Disclosure Requirements; OMB No. 2070-0151; in 40 CFR part 745; on 04/14/99 OMB extended the expiration date through 10/31/99.

EPA ICR No. 0649.06; NSPS for Mental Furniture Coating; OMB No. 2060-0106; in 40 CFR Part 60, subpart EE; on 04/19/99 OMB extended the expiration date through 08/31/99.

EPA ICR No. 1557.03; NSPS for Municipal Solid Waste Landfills; OMB No. 2060-0220; in 340 CFR Part 60, subpart WWW; on 04/19/99 OMB extended the expiration date through 08/31/99.

EPA ICR No. 1606.02; Information Requirements for Petitions to Modify the List of Regulated Substances under Section 112(r) of the Clean Air Act, as Amended; OMB No. 2050-0127; in 40 CFR part 68, subpart F; on 04/26/99

OMB extended the expiration date through 07/31/99.

EPA ICR No. 1772.01; Information Collection Activities Associated with EPA's Energy Star Buildings Program; OMB No. 2060-0347; on 04/26/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 1614.02; Reporting and Record Keeping Requirements under EPA's Green Lights Program; OMB No. 2060-0255; on 04/26/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 1031.05; Allegations of Significant Adverse Reactions to Human Health or the Environment—TSCA section 8(c); OMB No. 2070-0017; in 40 CFR part 717; on 04/27/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 1188.05; Significant New Use Rules for Existing Chemicals—TSCA section 5(a)(2); OMB No. 2070-0038; in 40 CFR part 721; on 04/27/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 0575.07; Health and Safety Date Reporting, Submission of Lists and copies of Health and Safety Studies; OMB No. 2070-0004; in 40 CFR part 716; on 04/27/99 OMB extended the expiration at through 07/31/99.

Dated: May 7, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99-12164 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6342-4]

Performance Evaluation Reports for Fiscal Year 1998 Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved state/EPA agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Quality, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to

them by EPA pursuant to section 105 of the Clean Air Act.

EFFECTIVE DATE: May 13, 1999.

ADDRESSES: Copies of the evaluation reports are available for public inspection at EPA's Region VII Air, RCRA, and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Ed West at (913) 551-7330.

Dated: May 3, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99-12160 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6341-6]

Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Under Section 10(a)(2) of Pub. L. 920423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Microbial and Disinfectants/Disinfection Byproducts Advisory Committee established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on May 20 and 21, 1999, from 9:00 a.m. to 5:00 p.m. eastern time at RESOLVE, Inc., 1255 23rd Street, NW, Suite 275 Washington DC 20037. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting will be to discuss how to characterize cancer risk from DBPs; review elements of cancer health effect risk assessment; and review ongoing studies related to DBP cancer health effects.

Statements from the public will be taken if time permits.

For more information, please contact Martha M. Kucera, Designated Federal Officer, Microbial Disinfectants/Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 401 M Street, SW, Washington, DC 20460. The telephone number is 202-260-7773 or E-mail kucera.martha@epamail.epa.gov.

Dated: May 6, 1999.

Robert W. Barles,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99-11984 Filed 5-12-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6334-9]

Public Notification Handbook—Draft for Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency is making available for review and comment a draft Public Notification Handbook (EPA 816-R-99-004). The Handbook will assist public water systems in implementing the revised public notification regulations, which are being proposed today in the **Federal Register**. The proposed regulations and Handbook will implement the revised public notification provisions enacted under the 1996 Safe Drinking Water Act (SDWA) amendments. The public notification regulations apply to owners and operators of public water systems which fail to comply with the drinking water standards and related regulations under the SDWA.

DATES: Written comments on the draft Public Notification Handbook are requested by July 31, 1999. EPA is also soliciting comment on the Handbook at the two public meetings on the proposed regulations and other public meetings to be scheduled during summer, 1999.

ADDRESSES: Please submit written comments on the draft Public Notification Handbook to Carl B. Reeverts, Manager, Public Notification Handbook, Drinking Water Implementation and Assistance Division, Office of Ground Water and Drinking Water (4606), U.S. EPA, 401 M Street, SW, Washington, DC 20460. You may also submit comments to Carl Reeverts via E-mail at reeverts.carl@epa.gov.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline at 1-800-426-4791. Copies of the proposed regulation and the draft Handbook may be obtained by calling the Safe Drinking Water Hotline at 1-800-426-4791 or by downloading the documents from Office of Ground Water and Drinking Water's web site at <http://www.epa.gov/safewater>.

SUPPLEMENTARY INFORMATION: The Public Notification Handbook is intended to make public water system owners' and operators' jobs easier and public notices more effective. The Handbook provides templates for notices appropriate for different violation situations and other aids to help water systems develop an effective public notification program. EPA and the Association of State Drinking Water Administrators (ASDWA) developed the draft Handbook under a Steering Committee comprised of representatives from the American Water Works Association, Association of Metropolitan Water Agencies, National Association of Water Companies, National Rural Water Association, and League of Women Voters. Two public meetings were held in June and September, 1998 to review and test the effectiveness of early drafts of the handbook. The draft Handbook is the result of that collaboration.

EPA welcomes comment on all aspects of the Handbook. In addition to soliciting written comments, EPA encourages stakeholder input on the draft Handbook at the two public meetings already scheduled to take comment on the proposed regulation, May 26, 1999 in Madison, Wisconsin and June 3, 1999 in Washington, DC. EPA is also planning two stakeholder meetings in summer, 1999 to discuss steps to improve the effectiveness of the Handbook before it is released in final form. Comment period on the proposed rule closes 60 days after publication in the **Federal Register**. Comments on the Handbook will be accepted through July 31, 1999. The final rule and Handbook are expected to be published in December 1999. For information on the status of the Handbook or the schedule of meetings, please contact the EPA Safe Drinking Water Hotline at (800) 426-4791.

Dated: April 27, 1999.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99-11163 Filed 5-6-99; 9:42 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 4, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0863.
Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 848.

Estimated Time per Response: 0.5 hours (multiple responses annually).

Frequency of Response: On occasion recordkeeping requirement.

Total Annual Burden: 125,000 hours.

Total Annual Costs: \$12,500.

Needs and Uses: The information gathered as part of Grade B signal strength tests will be used to indicate

whether consumers are "unserved" by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal. Parties impacted by the test results will be consumers; parties using the written test results will primarily be the satellite and broadcasting industries.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-12043 Filed 5-12-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 3, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th

Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0600.

Title: Application to Participate in an FCC Auction.

Form Numbers: FCC 175 and FCC 175-S.

Type of Review: Extension of an existing collection.

Respondents: Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 12,400.

Estimate Time per Response: 0.75 hours (Form 175); 0.25 hours (Form 175-S).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 15,600 hours.

Total Annual Costs: \$3,120,00.

Needs and Uses: The information will be used by the Commission to determine if the applicant is legally, technically, and financially qualified to participate in an FCC auction. The rules and requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants and deter possible abuses of the bidding and licensing process. The Commission plans to use this form for all upcoming auctions and reauctions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-12044 Filed 5-12-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 4, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork

Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0174.

Title: Section 73.1212, Sponsorship Identification, List Retention, and Related Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities.

Number of Respondents: 13,956.

Estimate Time Per Response: 6 mins. (40 Broadcasts/year); 5 secs. (2 Political ads/year).

Frequency of Response:

Recordkeeping; Third party disclosure.

Total Annual Burden: 55,862 hours.

Total Annual Costs: None.

Needs and Uses: Section 73.1212 requires a broadcast station to identify the sponsor(s) of any matter for which consideration is provided. For matters advertising commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In addition, when an entity rather than an individual sponsors the broadcast of matters that are of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or

executive committee, etc., of the organization paying for such matters. Sponsorship announcements are waived with respect to the broadcast of "want ads" sponsored by an individual, but the licensee shall maintain a list showing the name, address, and telephone number of each such advertiser. These lists shall be made available for public inspection. The data are used by the public so that they may know by whom they are being persuaded.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-12045 Filed 5-12-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder, Federal Maritime Commission, Washington, DC 20573.

Global Management Distribution Corp., 6308 Wood Lake Road, Jupiter, FL 33458, Officers: George M. Donaldson, Jr., President (Qualifying Individual), Mary Beth Donaldson, Vice President Cosmo Ocean Freight, Ltd., 146-22 Guy R. Brewer Blvd., Jamaica, NY 11434, Officers: Michael NG, President (Qualifying Individual), Patrick Chu, Vice President

Frontier Freight Forwarders, Inc., 706 Mission Street, Suite 900, San Francisco, CA 94103, Officers: Lynn C. Fritz, President, Linda K. Ellis, Asst. Vice President (Qualifying Individual)

Interworld Services, Inc., 17047 Erin Way Ct., Houston, TX 77095, Officers: Irene Sadkowski Cosme, President (Qualifying Individual), Armando Miralles, Vice President

Dated: May 7, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99-12052 Filed 5-12-99; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 27, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Mr. John A. R. Grimaldi*, and *Mr. Anthony Julio Grimaldi*, both of Tampa, Florida, to collectively retain the voting shares of Columbia Bank, Tampa, Florida.

Board of Governors of the Federal Reserve System, May 7, 1999.

Robert dev. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-12041 Filed 5-12-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 1999.

A. Federal Reserve Bank of Atlanta
(Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Cherokee Banking Company*, Canton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Cherokee Bank, N.A. (in organization), Canton, Georgia.

2. *United Americas Bancshares, Inc.*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of United Americas Bank, N.A. (in organization), Atlanta, Georgia.

Board of Governors of the Federal Reserve System, May 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-12042 Filed 5-12-99; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690-6207.

Comments Are Invested on

(a) Whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (45 CFR Part 92)—0990-0169—Extension No Change—Pre-award, post-award, and subsequent reporting and recordkeeping requirements are necessary to award, monitor, close out and manage grant programs, ensure minimum fiscal control and accountability for Federal funds and deter fraud, waste and abuse. Respondents: State and Local Governments; Number of Respondents: 4000; Average Burden per Respondent: 70 hours; Total Burden: 280,000 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: May 1, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99-12053 Filed 5-12-99; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO-99-17]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and

instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received with 60 days of this notice.

Proposed Projects

1. National Program of Cancer Registries—Cancer Surveillance System—NEW-National Center for Chronic Disease Prevention and Health Promotion (NCCDHP). The American Cancer Society estimates that 8.2 million Americans have a history of cancer and that in 1999, about 1.2 million new cases will be diagnosed. At the national level, cancer incidence data are available for only 14% of the population of the United States. While this is appropriate for analyses of major cancers in large population subgroups, it is not always adequate for minority populations and rare cancer analyses. Further, to plan and evaluate state and national cancer control and prevention efforts, national data are needed. Therefore, the Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Control, Division of Cancer Prevention and Control, proposes to aggregate existing cancer incidence data from states funded by the National Program of Cancer Registries into a national surveillance system.

These data are already collected and aggregated at the state level. Thus the additional burden on the states would be small. Program implementation would require funded states to report data to the CDC on an annual basis twelve months after the close of a diagnosis year and again at twenty-four months to obtain more complete incidence data and vital status from mortality data. The estimated total cost to respondents is \$885,000 per year.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
State, territorial, and District of Columbia cancer registries	63	1	2	126

2. Sentinel Network for Public Health Practice—NEW—The Division of Public Health Systems, Public Health Practice Program Office (PHPPO) proposes to establish a sentinel network of 160 local health departments to provide ongoing public health system infrastructure and capacity data. As the nation's prevention agency, the CDC is working to support the US public health mission of rapidly detecting disease and health risks, rapidly communicating, and strengthening the capacity to respond. Towards that goal, CDC proposes to assess and strengthen the nation's public health infrastructure by developing a network of local health departments that will provide ongoing information to public health leaders, policy makers, program managers and others to identify needs, target resources, and assist in overall preparedness. Data gathered by survey from the sentinel network will also lead

to improvement of the public health communications systems and reinforced training and credentialing for core workforce skills, and will help in developing standards for improved organizational performance.

The purpose of this Sentinel System and its related surveys are to: (1) Assess data and information systems, public health workforce, effective public health organization, relationships and resources that enable the performance of the ten essential services of public health for every community, and use these data in developing strategies to strengthen the infrastructure of public health; (2) rapidly detect changes in the health care environment as they affect the nation's health; (3) evaluate the usefulness, readability, and impact of CDC publications and documentation such as the Guide to Community Preventive Services, and (4) provide the CDC and collaborators with data to

assist in measuring performance of local health departments. Results from this research will be used to help the CDC in several ways. These systematic, longitudinal data will allow CDC and the public health community to improve infrastructure quality and capacity. Examples of crosscutting infrastructure issues that may be identified by these data include the extent of under-funding for public health, the need for effective local leadership and for integrated electronic information systems, and the emerging role of measurable standards for local health departments. CDC publications evaluation data will allow the CDC to assess how useful and linked to local need are its resources, and to plan revisions and future products. The health performance information will help direct the development of measurable standards. The cost to the respondent is \$0.00.

Form	Number of respondents*	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Assessing and Strengthening public health infrastructure	80	2	8	1,280
Year 2				
Evaluating CDC Publications	80	2	4	640
Assessing and strengthening public health infrastructure	160	2	8	2,560
Evaluating CDC Publications	160	2	4	1,280
Year 3				
Assessing and strengthening public health infrastructure	160	2	8	2,560
Evaluating CDC Publications	160	2	4	1,280
Total				9,600

*Respondents are local health departments.

Dated: May 6, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-12092 Filed 5-12-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

Title: Head Start Fellows Program.

OMB No.: 0970-1040.

Description: Public Law 103-252, the Human Services Amendments of 1994, amended the Head Start Act (the Act) to authorize the creation of a Head Start Fellows Program to support the professional development of individuals

working in the field of child development and family services. The Act was most recently reauthorized through fiscal year 2003, by the Coats Human Services Amendments of 1998, Public Law 105-285.

Head Start Fellowships are awarded on a competitive basis to individuals (other than Federal employees) selected from among applicants who are working, on the date of application, in local Head Start programs or otherwise working in the fields of child development and children and family services. The information collected from the applications is used to ensure that individuals selected to be Head Start

Fellows have the appropriate experience/skills, and that the training developed for them and the work assigned to them will enhance their ability to make significant contributions

to the fields of child development and family services. The information collected is used by program staff and policy makers at the Federal level to

make judgements on the progress and needs of the program.

Respondents: Individuals or households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Fellows	200	1	2	400

Estimated Total Annual Burden Hours:
400.

In compliance with the requirements of Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 7, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99-12106 Filed 5-12-99; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS-99-07]

Request for Applications Under the Office of Community Services' Fiscal Year 1999 Community Services Block Grant Training, Technical Assistance, and Capacity-Building Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' Community Services Block Grant Training, Technical Assistance and Capacity-Building (CSBG-T&TA) Discretionary Program.

SUMMARY: The Office of Community Services (OCS) invites eligible entities to submit applications for FY 1999 funding of competitive grants under the CSBG-T&TA discretionary grants program.

Applications received in response to this notice will be screened and evaluated as indicated in this document. Awards will be contingent on the outcome of the competition and the availability of funds.

ADDRESSES: Prior to submitting an application, potential applicants must obtain a copy of the CSBG-T&TA Application Kit, containing additional program information, forms, and instructions. Application Kits are available by writing or calling the Office of Community Services at 5th Floor West, Aerospace Building, 370 L'Enfant Promenade, S.W. Washington DC 20447. To obtain a copy of the CSBG-T&TA Application Kit, call: (202) 401-4787.

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, Director, Division of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, S.W. Washington, DC 20447. Telephone: (202) 401-9343.

A copy of the **Federal Register** containing the CSBG-T&TA program announcement is available for reproduction at most local libraries and Congressional District Offices. It is also available on the Internet through GPO Access at the following web address:

http://www.access.gpo.gov/su_docs/aces/aces140.html

If the announcement is not available at these sources, it may be obtained by writing to the office listed under **ADDRESSES** above.

APPLICATION DEADLINES: The closing dates for submission of applications is July 13, 1999. Further details regarding application submission are provided in the Supplementary Information section of this program announcement. Mailed applications postmarked after the closing date will be classified as late. Refer to APPLICATION SUBMISSION below for other details.

SUPPLEMENTARY INFORMATION:

A. Program Announcement

The Application Kit for the FY 1999 CSBG-T&TA program will not be published in the **Federal Register**. Rather, OCS is publishing FY 1999 Program Announcement OCS-99-07 in the **Federal Register**. Program Announcement OCS-99-07 contains the following information for the CSBG-T&TA program: Date of Application Kit; Application Deadline; Program Contact Person; Legislative Authority; Eligible Applicants and Availability of Funds; Program Priority Areas; Project Periods and Budget Periods; Matching Requirement; Type of Awards; and Review Criteria.

B. General Instructions

In order to be considered for a grant under the FY 1999 OCS CSBG-T&TA program announcement, an application must be submitted on the forms supplied and in the manner prescribed by OCS in the 1999 CSBG-T&TA Application Kit. When requesting an Application Kit, the applicant must specify the Community Services Block

Grant Training, Technical Assistance and Capacity Building Application Kit. This is to ensure receipt of all necessary forms and information, including any program-specific evaluation criteria. Application Kits, including all of the necessary forms and instructions, will be available for reading and downloading from the Internet at the OCS Website at:
<http://www.acf.dhhs.gov/programs/ocs/kits1.htm>

C. Application Submission

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or postmarked on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor Aerospace, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447; with the note: Attention: Application for CSBG/T&TA Program or CFDA No. 93-570.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note: Attention: CSBG/T&TA Program or CFDA No. 93-570.

ACF cannot accommodate transmission of applications by fax or through other electronic media.

Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Applications, once submitted, are considered final and no additional materials will be accepted.

Late applications: Applications, which do not meet the criteria above, are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

D. Details for This Program Announcement

Pertinent information of concern for potential applicants for the CSBG/ Training, Technical Assistance and Capacity Building Program is set forth below:

(CFDA No. 93.570) Deadline Date: July 13, 1999

(1) *Program Contact Persons:* Margaret Washnitzer (202) 401-9343.

(2) *Date of Application Kit:* May 14, 1999.

(3) *Application Deadline:* Applications must be **POSTMARKED** by July 13, 1999. Detailed application submission instructions are included in the Application Kit.

(4) *Legislative Authority:* Section 674(b)(2) of the Community Services Block Grant (CSBG) Act of 1981, (P.L. 97-35) as amended by the Coats Human Services Reauthorization Act of 1998, (P.L. Law 105-285).

(5) *Eligible Applicants and Availability of Funds:* The OCS is authorized to make grants and award contracts to eligible entities, organizations whose membership is composed of CSBG-eligible entities or agencies that administer programs for CSBG-eligible entities. Funds available: Approximately \$2,700,000, of which \$400,000 is committed for a continuation grant.

(6) *Priority Areas:* A description of the Program Priority Areas is given below. Refer to Application Kit for complete details.

Priority Area 1.0: Training and Technical Assistance for the Community Services Network

Sub-Priority Areas:

- 1.1 National Training and Technical Assistance to Enhance Community Action;
- 1.2 Statewide Partnership Grants to Implement Results-Oriented Management and Accountability;
- 1.3 Training and Technical Assistance to Develop Special Initiatives Between CAAs and Other Organizations that Address Urban Problems; and
- 1.4 TA to Measure Civic/Social Capital Development.

Priority Area 2.0: CAA Capacity Building

Sub-Priority Areas

- 2.1 Collection, Analysis, and Dissemination of Information on the CSBG Activities;
- 2.2 Local Capacity Building Projects;
- 2.3 Peer-to-Peer Intervention;
- 2.4 Strengthening of CAA Capacity on Legal Issues.

Priority Area 1.0: Training and Technical Assistance for the Community Services Network

This Priority Area addresses the development and implementation of coordinated, comprehensive nationwide or, where appropriate, statewide training and/or technical assistance programs to assist State CSBG staff, staff of State and regional organizations representing eligible entities, and staff of local service providers which receive funding under the CSBG Act, to acquire the skills and knowledge needed to plan, administer, implement, monitor, and evaluate programs designed to ameliorate the causes of poverty in local communities. Programs should include the provision of training and/or technical assistance to State staff, CAA associations, and/or staff of local service providers statewide or nationwide and a description of collaboration with State CSBG staff and local service providers.

Sub-Priority Area 1.1: Training and Technical Assistance to Enhance Community Action Agencies (CAAs) and Other Local Service Providers to support program and management improvements. All organizations in the Community Services Network need to be strengthened to perform their respective roles as identified in the Community Services Block Grant Act, as Amended by the Coats Human Services Reauthorization Act of 1998 (P.L. 97-35, and P.L. 105-285). The new CSBG Reauthorization Act includes the

following: (1) Additional requirements and responsibilities for local CAA Boards of Directors; (2) increased focus on monitoring, training and technical assistance of the CSBG (especially with regard to termination and reduction of funding to eligible entities); and (3) mandates that the Community Services Network participate in the ROMA Performance Measurement system or another system approved by the Department of Health and Human Services. The purpose of this Sub-Priority Area is to provide funding for the development and implementation of a comprehensive nationwide training and/or technical assistance program to assist boards and staff of local service providers which receive funding under CSBG to acquire skills and knowledge needed to plan, administer and evaluate effective anti-poverty programs. This may include national dialogues and workshops, seminars and conferences, the development and dissemination of newsletters and position papers, educational materials and other activities. Any activities undertaken must be consistent with the national goals of the ROMA process as developed by the OCS National Task Force on Monitoring and Assessment. This comprehensive nationwide training and technical assistance program should be designed as a 3-year program. Future funding will be contingent on the availability of funds and planning should be done in collaboration with State CSBG Directors and/or their national association's local service providers.

Sub-Priority Area 1.2: Statewide Partnership Grants to Implement ROMA. The purpose of this Sub-Priority Area is to provide training and technical assistance to CAAs and States in the implementation of ROMA. State CAA Associations, in partnership with State CSBG Administrators, are eligible to apply for grants under this Sub-Priority. An applicant will be considered under this priority, only if 90 percent of the CAAs in the State have begun some phases of the ROMA implementation at the time the applicant's proposal is written. All eligible entities must provide evidence that there has been coordination with the State CSBG Office in developing applications under this sub-priority. Data yielded will be used at the local, State and national levels by policy-makers. These Statewide grants are awarded to one entity per State to provide technical support to State CAA Associations, CAAs and States.

Sub-Priority Area 1.3: Technical Assistance to Develop Special Initiatives Between CAAs and Organizations that Address Urban Problems of Low-Income

People. Issues of crime, violence, drug abuse, unemployment, poverty, family breakdown, and inadequate education and training of many young people to attain productive employment in an increasingly technological labor market, threaten the safety and viability of many urban communities. This project will provide technical assistance to assist CAAs in developing and implementing collaborative community-wide strategies, effective organizational working relationships, and special initiatives among CAAs and other organization(s) focusing on issues of crime, violence, family breakdowns, drug abuse and poverty. Emphasis will be on assisting CAAs to bring together the various community, business, labor, voluntary, educational, civil rights, and governmental sectors required to develop model local strategies to improve conditions in low-income, urban communities. Applicants are encouraged to develop applications in collaboration with at least one other national private, non-profit organization, which has a substantial track record in formulating strategies to improve conditions in low-income urban communities.

Sub-Priority Area 1.4: Technical Assistance to Support the Use of Scales to Measure Civic/Social Capital Development. The OCS is interested in developing the community action network's capacity to apply the use of scales to measure civic/social capital development. The purpose of this sub-priority is to provide funding to explore and to apply the most current body of knowledge regarding the development of civic/social capital to meet the needs of low-income neighborhoods. Further, the project will advance the capacity of community action agencies to measure and evaluate civic social capital development research and best practices with the implementation of ROMA in the areas of community scaling, neighborhood assessment, resident participation, surveying and/or strategic planning. OCS is interested in funding innovative strategies that motivate CAAs to focus on using civic/social capital to develop and strengthen neighborhood assets while building opportunities for participation by residents. Applicant CAAs should have a demonstrated ability to bring multiple stakeholders together in order to address common issues or problems and experience in the use of scales to measure community-level outcomes. Applicant should include a plan, which describes how results will be shared with the larger community action network.

Priority Area 2.0: CAA Capacity Building

This Priority Area addresses activities to assist community action agencies (CAAs) to enhance their ability to plan, manage, deliver and evaluate programs to achieve results. This includes: support for the continuation and improvement of (a) CSBG voluntary data collection, analysis, dissemination and utilization; (b) Program and management techniques; (c) Computer skills and electronic networking; (d) Peer-to-peer intervention to avert CAA crisis management; and (e) Legal assistance to assist community action agencies to further the understanding (i.e., special initiatives) of legal frameworks.

Priority Area 2.1. Collection, Analysis and Dissemination of Information on the CSBG Activities Nationwide. Technical assistance under this priority is being supported as a continuation grant in 1999. This grant will be continued without competition.

Priority Area 2.2. Local Capacity Building. The purpose of this Sub-Priority is to promote management efficiency and program productivity. It is essential that local CAAs and other partners in the Community Services Network share effective program/management techniques and information systems technology being used and/or developed by eligible entities to address various aspects of poverty and the implementation of ROMA by the Community Services Network. This sub-priority area is to fund grants to community action agencies to promote local CAA capacity building. Activities may include: sharing of model needs assessment tools; sharing of effective computer techniques; the development of effective community organizing techniques; demonstration of scaling techniques; and use of tracking systems; internal and external communication networks; effective integration of information systems; successful leveraging strategies, etc. Applicants must include a plan which describes how the results will be shared with the larger Community Services Network.

Priority Area 2.3: Peer-to-Peer Crisis Intervention. The purpose of this Sub-Priority Area is to strengthen the fiscal and management capacity of eligible entities. OCS will fund several organizations to develop and implement strategies to provide coordinated, timely peer-to-peer technical assistance and crisis aversion intervention strategies for CAAs which have identified themselves as experiencing programmatic, administrative, board, and/or fiscal

management problems. Such technical assistance should be designed to prevent fiscal and management problems from deteriorating into crisis situations that could threaten the capacity of CAAs to provide quality services to their communities or give rise to possible termination. In a written agreement with chosen CAAs, the applicant will coordinate and deploy the technical assistance resources of experienced individuals within the Community Services Network or other agencies which administer similar programs to assist low-income individuals in the identification and resolution of programs, through necessary actions, including training, to ensure that relevant and timely assistance is provided. Such assistance may be requested to assist the agency in resolving adverse program monitoring or audit findings, improve or upgrade financial management systems, prevent losses of funds, avert serious deterioration of the board of directors, or other immediate assistance to CAAs as requested. To the extent feasible, the applicant may be expected to develop an expert technical assistance resource bank of experienced individuals from the Community Services Network who may be deployed to provide peer technical assistance.

Priority Area 2.4: Strengthening CAA Capacity on Legal Issues Toward Problem Solving. The purpose of this Sub-Priority Area is to fund a national organization with legal expertise whose membership is composed of eligible entities to further the capacity of community action agencies to better prepare themselves and their customers on the legal problems and solutions which are commonly faced in the delivery of human services. This national organization applicant should assist community action agencies or their associations in establishing legal frameworks for problem solving and management strategies when appropriate. Working in collaboration with at least one national organization whose membership is composed of eligible entities, the applicant would be expected to propose and conduct high-quality legal training or technical assistance tailored to the CAA network at national conferences or training workshops. The applicant would also be expected to contribute specialized articles, which further the network's legal understanding to newsletters or other dissemination devices within the CAA network. Additionally, the applicant would be expected to establish and maintain a revolving loan fund or some mechanism to further the

resources of eligible entities in the procurement of specialized legal assistance. Legal expertise funded by this Sub-Priority Area is not proposed as a substitute for the local agency's own legal counsel nor for local administrative matters or other situations unrelated to the CSBG legislation. Instead, training and technical assistance for this project should serve as an additional resource for local counsel faced with community action issues which might require specialized knowledge and skills, including those of competent persuasion and negotiation. Anticipated results are: (1) legal capability at the CAA level will be enhanced; (2) Legal opinions will be prepared in a timely manner to increase their effectiveness; (3) Negotiated strategies which involve legal opinions can serve as a framework for solving problems to avert major crises. Applicant should design a 3-year program. Future funding will be contingent on the availability of funds.

(7) **Project Periods and Budget Periods:** For projects included in the FY 1999 announcement, the project and budget periods are 12 months, with the exception of Sub-Priority 2.1—Collection, Analysis, and Dissemination of Information on CSBG Activities Nationwide. The project under Sub-Priority 2.1 will have a project period up to three (3) years through FY 1999. The application for a continuation grant funded under these awards beyond the initial 12-month budget period, but within the three-year project period, will be entertained in subsequent years, on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government. Budget periods are for 12 months, unless the applicant presents a justification for a longer period of time; in which case, a grant may be made for a period of up to 17 months.

(8) **Matching Requirements:** None.

(9) **Type of Awards:** Grants.

(10) **Review Criteria:**

Criteria for Review and Evaluation of Applications Submitted under the FY 1999 CSBG-T&TA Program Announcement

1. **Criterion I: Need for Assistance** (Maximum: 20 points)

(a) The application documents that the project addresses vital needs related to the purposes stated under Sub-Priority Areas discussed in Part B of the CSBG-T&TA Application Kit and provides statistics and other data and information in support of its contention. (0–10 points).

(b) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, local service providers and/or State and Regional organizations of local service providers. (0–10 points)

2. **Criterion II: Work Program** (Maximum: 30 points).

The work program must be results-oriented, appropriately related to the legislative mandate and specifically related to the proposed Sub-Priority Area. Applicant must address specific outcomes to be achieved; performance targets which the project is committed to achieving, including specifications for not setting lower or higher target levels and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support including priority this project has for the agency, past performance in similar work and specific resources contributed to the project which are critical to success. Applicants must define the comprehensive nature of the project and methods which will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the priority area.

3. **Criterion III: Significant and Beneficial Impact** (Maximum 15 points).

Applicant adequately describes how the project will assure long-term program and management improvements and have advantages over other products offered to achieve the same outcomes for State CSBG offices, CAA State associations, and/or local providers of CSBG services and activities.

The applicant must provide the types and amounts of public and/or private resources it will mobilize and how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

An applicant proposing a project with a training and technical assistance focus also must indicate the number of organizations and/or staff it will impact. An applicant proposing a project with a data collection focus also must provide a description of the mechanism the applicant will use to collect data, how it can assure collections from a significant number of States, and how many States will be willing to submit data to the applicant. An applicant proposing to develop the symposium series or other policy-related projects must identify the number and types of beneficiaries. Methods of securing participant feedback and evaluations of activities must be described for all Priority Areas.

4. *Criterion IV: Evidence of Significant Collaborations* (Maximum 10 Points)

A new performance-based paradigm is replacing a compliance-based approach to managing CSBG programs. Under this new approach, development and strengthening of collaborative working relationships among all eligible entities in the Community Services Network and with other related organizations is emphasized. OCS does not believe that the Priority Areas in this Program Announcement can be effectively carried out without collaboration and cooperation. Thus, applicants must describe how they will involve partners in the Community Services Network in their activities. Where appropriate, applicants must describe how they will interface with other related organizations. If subcontracts are proposed, documentation of the willingness and capacity for the subcontracting organization(s) to participate must be described.

5. *Criterion V: Ability of Applicant to Perform* (Maximum: 20 points).

(a) The applicant demonstrates experience and a successful track record relevant to the specific activities and program area that it proposes to undertake; therefore, organizations which propose providing training and technical assistance must detail their competence in the specific program Priority Area and as a deliverer with expertise in the specific fields of training and technical assistance on a nationwide basis. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. (0-10 points)

(b) The application must fully describe (e.g. a resume) the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project. (0-10 points)

6. *Criterion VI: Adequacy of Budget* (Maximum: 5 points).

(a) The resources requested are reasonable and adequate to accomplish the project. (0-3 points)

(b) Total costs are reasonable and consistent with anticipated results. (0-2 points)

Additional Requirements:

Applicants for grants must also meet the following requirements:

A. Paperwork Reduction Act of 1995 #0970-0062

Under the Paperwork Reduction Act of 1995, Public Law 104-13, the

Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including Program Announcements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This Program Announcement does not contain information collection requirements beyond those approved for ACF grant announcements/applications under OMB Control Number 0970-0062.

B. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. NOTE: State/Territory participation in the Intergovernmental Review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

As of September 1998, a number of jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally recognized Indian Tribes need take no action in regard to E.O. 12372. A list of these non-participating jurisdictions can be found in the Application Kit for the CSBG/ Training, Technical Assistance and Capacity Building Program.

Although the non-participating jurisdictions no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions.

Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date

of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor, 370 L'Enfant Promenade, S.W., Washington, DC 20447.

Dated: May 6, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99-12134 Filed 5-12-99; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N-1174]

Dietary Supplements; Center for Food Safety and Applied Nutrition Strategy; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit comments that will assist the Center for Food Safety and Applied Nutrition (CFSAN) to develop an overall strategy for achieving effective regulation of dietary supplements under the Dietary Supplement Health and Education Act (DSHEA). This meeting is intended to give the public an opportunity to comment on the development of the strategy.

DATES: The meeting will be held on June 8, 1999, from 10 a.m. to 4 p.m. Submit written comments by May 28, 1999.

ADDRESSES: The meeting will be held at the Cohen Bldg., auditorium, 330 Independence Ave. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Naomi Kulakow, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW.

Washington, DC 20204, 202-205-8682, FAX 202-260-8957, e-mail nkulakow@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

This meeting is the first of two meetings to seek stakeholder comments on the development of an overall strategy for achieving effective regulation of dietary supplements under the Federal Food, Drug, and Cosmetic Act, as amended by DSHEA. The meetings will build upon themes that emerged from a broader stakeholder meeting sponsored by CFSAN in June 1998. That meeting addressed the nonfood safety initiative programs that are managed by CFSAN and identified some basic themes including: (1) The need to maintain a credible FDA program, including compliance, enforcement, and consumer outreach activities that will help ensure consumer confidence in FDA regulated products; (2) the need to maintain a solid, science based program staffed with highly qualified scientists; and (3) the recognition that FDA's assistance to consumers and the regulated industry is important.

II. Registration and Requests for Oral Presentations

If you would like to attend the meeting, you must register with the contact person (address above) by May 28, 1999, by providing your: Name, title, business affiliation, address, telephone, and fax number. To expedite processing, registration information may also be faxed to 202-260-8957. If you need special accommodations due to disability, please inform the contact person when you register.

If you wish to make an oral presentation during the meeting, you must inform the contact person of that desire when you register to attend and submit: (1) A brief written statement of the general nature of the evidence or arguments that you wish to present, (2) the names and addresses of the persons who will give the presentation, and (3) the approximate length of time that you are requesting for your presentation. Depending on the number of people who register to make presentations, we may have to limit the time allotted for each presentation.

III. CFSAN's 1999 Program Priorities Document

The meeting announced in this notice, as well as a meeting to be announced later on the west coast, are in response to CFSAN's 1999 Program Priorities document that calls for the development of an overall dietary

supplement strategy in conjunction with other agency units and stakeholders. A copy of the priorities document is available on the Internet on FDA's Website at "<http://vm.cfsan.fda.gov/~dms/cfsan199.html>".

The priorities document states that the overall strategy should address all elements of the dietary supplement program including: (1) Boundaries between dietary supplements and conventional foods, between dietary supplements and drugs, and between dietary supplements and cosmetic products; (2) claims; (3) good manufacturing practices; (4) adverse event reporting; (5) laboratory capability; (6) research needs; (7) enforcement; and (8) resource needs. FDA's objective in developing this strategy is to ensure consumer access to safe dietary supplements that are truthfully and not misleadingly labeled. FDA intends to develop this strategy by following a process of openness, flexibility, efficiency, and commitment to public health.

FDA has identified four criteria for priority ranking the tasks encompassed in the strategy. These criteria are: (1) Enhancement of consumer safety, (2) development of health-related product labeling regulation, (3) improvement in efficiency of operation, and (4) closure on unresolved regulatory issues.

This meeting also addresses activity undertaken by the agency to solicit comments in accordance with section 406(b) of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) (21 U.S.C. 393(b)).

IV. Agenda and Goals

To help focus comments for the June 8, 1999, meeting, FDA requests that oral and written input regarding an overall strategy for achieving effective regulation of dietary supplements address the following questions:

1. In addition to ensuring consumer access to safe dietary supplements that are truthfully and not misleadingly labeled, are there other objectives that an overall dietary supplement strategy should include?

2. Are the criteria for prioritizing the tasks within the supplement strategy appropriate? Which specific tasks should FDA undertake first?

3. What factors should FDA consider in determining how best to implement a task (i.e., use of regulations, guidance, etc.)?

4. What tasks should be included under the various dietary supplement program elements in the CFSAN 1999 Program Priorities document?

5. Are there current safety, labeling, or other marketplace issues that FDA should address quickly through enforcement actions to ensure, for example, that consumers have confidence that the products on the market are safe and truthfully and not misleadingly labeled?

6. Toward what type or area of research on dietary supplements should FDA allocate its research resources?

7. Given FDA's limited resources, what mechanisms are available, or should be developed, to leverage FDA's resources to meet effectively the objective of the strategy?

V. Comments

Interested persons may, on or before May 28, 1999, submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch via e-mail to "FDA.Dockets@bangate.fda.gov" or via the FDA Website "<http://www.fda.gov>". You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Transcripts

You may request transcripts of the meeting in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Website "<http://www.fda.gov>".

Dated: May 6, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99-12039 Filed 5-10-99; 1:52 pm]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R-264, A-G]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection

Request: Revision of a currently approved collection;

Title of Information Collection: Medicare DMEPOS Competitive Bidding Demonstration;

Form No.: HCFA-R-0264, A-G;

Use: Section 4319 of the Balanced Budget Act (BBA) mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The first of these demonstration projects implements competitive bidding of categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price. Each demonstration project may be conducted in up to three metropolitan areas for a three year period. Authority for the demonstration expires on December 31, 2002. The schedule for the demonstration anticipates about a six month period required between mailing the bidding forms to potential bidders and the start of payments for DMEPOS under the demonstration. HCFA intends to operate the

demonstration in two rounds, the first of two years, and the second of one year. HCFA has announced that it intends to operate its first demonstration in Polk County, Florida, which is the Lakeland-Winter Haven Metropolitan Area.

There are seven forms that are required for the demonstration. Form HCFA-R-0264A, will be filled out by suppliers to describe the attributes of their organization, including quality of services and financial data. Form HCFA-R-0264B will be filled out by suppliers for each of the categories of DMEPOS for which they bid, and includes information about their supply of that category of equipment or supplies, and the prices that they bid for each item in that category. Form HCFA-R-0264C will be used by site inspectors who gather information at the facilities of bidders. Form HCFA-R-0264D is used to gather data from bank or financial references for the bidding suppliers. Form HCFA-R-0264E is used to gather data from business referral sources for the bidding suppliers. HCFA-R-0264F is used by suppliers whose bids are in the competitive range to report financial data. Form HCFA-R-0264G has been added to meet public comments so that nursing homes that wish to continue to use their existing suppliers for the demonstration product categories may report that information.

The competitive bidding demonstration for DMEPOS has the following objectives:

- Test the policies and implementation methods of competitive bidding to determine whether or not it should be expanded as a Medicare Program.
- Reduce the price that Medicare pays for medical equipment and supplies.
- Limit beneficiary out-of-pocket expenditures for copayments.
- Improve beneficiary access to high quality medical equipment and supplies.
- Prevent business transactions with suppliers who engage in fraudulent practices.

HCFA plans to mail the bidding package, including the referenced forms A and B, to potential bidders at the first demonstration sites in Polk County, Florida on February 12, 1999, and to request bidder submissions by March 29, 1999. Forms C, D, E and F will be used for inspections, reference checking, and financial information gathering in the three months following the bid submissions. These forms will be used by HCFA or its agents to gather information regarding bidders who have made financially attractive bids and are

being evaluated for quality, financial stability, and other attributes for consideration as demonstration suppliers.

Frequency: Two times at each demonstration site;

Affected Public: Business or other for-profit, and not-for-profit institutions;

Number of Respondents: 2,060;

Total Annual Responses: 2,060;

Total Annual Hours: 24,795.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-12120 Filed 5-12-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R-243]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity

of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Medicare Agreement Application, Health Care Prepayment Plan and Supporting Regulations in 42 CFR, Section 417.800—.840.

Form No.: HCFA-R-243.

Use: An organization must meet certain requirements to be a Health Care Prepayment Plan that is eligible for a Medicare 1833 agreement. The application is the collection form used to obtain information from an organization that would allow HCFA staff to determine compliance with the regulations. This form includes requests for information about: the management of the applicant organization; arrangements for providing health care to beneficiaries; meeting Medicare requirements for appeals, hearings, advance directives, health benefits; risk sharing with other entities; the fiscal soundness of the applicant; the cost budget, which forms the basis for HCFA payment; prevention of duplicate payment; and the applicant's marketing strategy.

Frequency: Other (One time).

Affected Public: Business or other for-profit institutions, Not-for-profit institutions, and State, Local or Tribal Governments.

Number of Respondents: 15.

Total Annual Responses: 15.

Total Annual Hours: 1,125.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 7, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-12121 Filed 5-12-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R-270]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection.

Title of Information Collection: Managed Care organization Year 2000 Continuity and Contingency Planning (BCCP) Status Report.

Form Number: HCFA-R-0270.

Use: This information is needed to determine the status of HCFA's business partners millennium readiness.

Frequency: Monthly.

Affected Public: Federal Government, Business or other for-profit, and Not-for-profit institutions.

Number of Respondents: 350.

Total Annual Responses: 4,200.

Total Annual Hours Requested: 44,450.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch,

Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-12122 Filed 5-12-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R-191]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Granting and Withdrawal of Deeming Authority to National Accreditation Organizations and Supporting Regulations in 42 CFR Sections 488.4-9 and 488.201.

Form No.: HCFA-R-191 (OMB# 0938-0690).

Use: The information collected is used by HCFA to determine whether a private accreditation organization's criteria for granting accreditation is equal to or more stringent than the criteria used by Medicare to determine provider and supplier eligibility for participation in the Medicare Program.

Frequency: Quarterly and On occasion.

Affected Public: Not-for-profit institutions, and Business or other for-profit.

Number of Respondents: 5.

Total Annual Responses: 28.

Total Annual Hours: 451.2.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 8, 1999,

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-12123 Filed 5-12-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-0381]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

Type of Information Collection

Request: Extension of a currently approved collection.

Title of Information Collection:

Identification of Extension Units of Outpatient Physical Therapy (OPT) and Outpatient Speech Pathology (OSP) Providers and Supporting Regulations in 42 CFR 485.701-785.729.

Form No.: HCFA-381 (OMB# 0938-0273).

Use: Medicare requires OPT/OSP providers to be surveyed to determine compliance with Federal requirements. When an OPT/OSP provider furnishes services to locations other than their already certified premises (extension locations), those premises are considered to be part of the OPT/OSP provider and are subject to the same Medicare regulations as the primary location. This form is used by the State survey agencies and by the HCFA regional offices to identify and monitor extension locations to ensure their compliance with Federal requirements. The HCFA-381 form requests information such as: facility name, provider number, where services are rendered, and the number of OPT/OSP services rendered.

Frequency: Annually.

Affected Public: Business or other for-profit

Number of Respondents: 2,300.

Total Annual Responses: 2,300.

Total Annual Hours: 575.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 6, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-12124 Filed 5-12-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, June 3, 1999, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to adjournment. The topics proposed for discussion include but are not limited to (1) the NIH Graduate Program; (2) Biomedical Computing; (3) the Council of Public Representatives; (4) the Office of Medical Applications of Research; and (5) the Office of Protection from Research Risks. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Special Assistant to the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892-0159, telephone (301) 496-0959, fax (301) 496-7451, will furnish the meeting agenda, roster of committee members, and available substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than May 28, 1999.

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99-12076 Filed 5-12-99; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee F—Manpower & Training.

Date: June 13–15, 1999.

Time: 3:30 PM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th St., NW., Washington, DC 20037.

Contact Person: Mary Bell, PHD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496-7978.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-12078 Filed 5-12-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 8–9, 1999.

Time: June 8, 1999, 7:00 pm to

Adjournment.

Agenda: To review and evaluate grant applications.

Place: The MidTown Hotel, 220 Huntington Avenue, Boston, MA 02115.

Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The

Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Genetics and Molecular Biology of Parkinsonism.

Date: June 22–23, 1999.

Time: June 22, 1999, 7:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Sawgrass Marriott Hotel, 1000 PGA Tour Boulevard, Ponte Vedra Beach, FL 32082.

Contact Person: James P. Harwood, PhD, Deputy Chief, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 23–24, 1999.

Time: June 23, 1999, 7:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hilton Pearl River, 500 Veterans Memorial Drive, Orangeburg, NY 10965.

Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99-12070 Filed 5-12-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications

and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: June 1–2, 1999.

Open: June 1, 1999, 2:30 pm to 3:30 pm.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference 9A51.

Closed: June 1, 1999, 3:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference 9A51.

Closed: June 2, 1999, 8:00 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference 9A51.

Contact Person: Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: June 1–2, 1999.

Open: June 1, 1999, 2:30 pm to 3:30 pm.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 7.

Closed: June 1, 1999, 3:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 7.

Closed: June 2, 1999, 8:00 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 7.

Contact Person: Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Endocrine and Metabolic Diseases Subcommittee.

Date: June 1–2, 1999.

Open: June 1, 1999, 2:30 pm to 3:30 pm.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: June 1, 1999, 3:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: June 2, 1999, 8:00 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: June 1–2, 1999.

Open: June 1, 1999, 12:30 pm to 2:30 pm.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: June 1, 1999, 3:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: June 2, 1999, 9:45 am to 10:15 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Open: June 2, 1999, 10:15 am to Adjournment.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.
(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–12071 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 17, 1999.

Open: 8:30 am to 12:00 pm.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Steven J. Hausman, Deputy Director, NIAMS/NIH, Bldg. 31, Room 4C–32, 31 Center Dr. MSC 2350, Bethesda, MD 20892–2350.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12072 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MBRS Special Emphasis Panel.

Date: May 20, 1999.

Time: 4:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS19, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Hackett, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS19J, Bethesda, MD 20892, (301) 594–2771.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12073 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, Marc Subcommittee A.
Date: June 14–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard I. Martinez, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12074 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: June 24–25, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, 45 Center Drive, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12077 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.
Date: June 2–3, 1999.

Closed: June 2, 1999, 7:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.

Open: June 3, 1999, 8:30 AM to 3:25 PM.

Agenda: Program Developments and Priorities.

Place: Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: James F. Vaughan, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–12079 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology and Infectious Diseases Research Committee.

Date: June 10–11, 1999.

Open: June 10, 1999, 9:00 am to 10:00 am

Agenda: The meeting will be open for discussion of administrative details relating to committee business and program review, and for a report from the Director, Division

of Extramural Activities, which will include a discussion of budgetary matters.

Place: Georgetown Holiday Inn, Mirage 1 Room, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Closed: June 10, 1999, 10:00 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Mirage 1 Room, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Room 4C12, Solar Bldg., 6003 Executive Blvd., Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99-12080 Filed 5-12-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Peer Review Oversight Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Peer Review Oversight Group.

Date: June 21, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: Agenda items for discussion will include: Electronic Research Administration, the Customer Satisfaction Survey, the accessibility of research data, and the possibility of shorter page limits for grant applications (PHS 398).

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Barbara Nolte, Program Analyst, Office of Extramural Research, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 252, Bethesda, MD 20892, 301-402-1058.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical

Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-12075 Filed 5-12-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 64 FR 17614-17675, dated April 22, 1999) is amended to reflect the transfer of meeting management support responsibilities from the Public Health Program Office to Management Analysis and Services Office, Office of Program Support, Centers for Disease Control and Prevention.

Section C-B, Organization and Functions, is hereby amended as follows:

Revise the mission statement for the *Management Analysis and Services Office (CA59)*, *Office of Program Support (CA5)*, as follows:

In item (1) of the mission statement, insert the words "classroom and meeting management support" after "correspondence," and before "forms design".

Revise the mission statement for the *Division of Media and Training Services (CH7)*, *Public Health Practice Program Office (CH)*, as follows:

Delete item (9) in its entirety and renumber the items accordingly.

Revise the statement for the *Meeting and Training Support Branch (CH73)* as follows:

Delete item (4) in its entirety and renumber the items accordingly.

Dated: May 4, 1999.

Claire Broome,

Acting Director.

[FR Doc. 99-12144 Filed 5-12-99; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Assessment of the National Leadership Institute Program and Services—New

The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) intends to conduct an assessment of its National Leadership Institute (NLI). The goal underlying the technical assistance and training opportunities provided through the NLI is to strengthen the competitive position and power of nonprofit community-based organizations (CBOs) which are essential components of local substance abuse services for the uninsured and under-insured.

The NLI gathers, adapts, and disseminates the best available knowledge about business management for nonprofit agencies, including competitive bidding, strategic development and business planning, cultural competency, team building and change management, and Management Information Systems. Participants in the NLI technical assistance programs are self-identified and participate in either short- or long-term technical assistance (TA). Short-term TA includes two on-site TA visits, one training event, one group technical assistance activity, and up to five resource packages. Long-term TA includes up to four on-site TA visits, up to three training events, two group TA activities, and up to 10 resource packages. Training efforts are also conducted by the NLI, using curricula developed by and administered by the NLI.

Both a process and an impact assessment will be conducted. The process assessment will describe the needs faced by CBOs, the types of training and technical assistance that CBOs receive through the NLI, and CBO satisfaction with services. The impact assessment will focus on specific changes made by CBOs in response to NLI recommendations, and

improvements in self-rated organizational performance and several organization status measures.

Analysis of this information will assist CSAT in documenting the numbers and types of participants accessing these services, and describing the extent to which participants improve in their knowledge, skill, and ability to manage their organizations in this changing business environment. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of technical assistance activities.

The assessment design for technical assistance participants will be a pre-post design that collects identical information at initiation of NLI contact and again after 12 months. This time frame is necessary to allow CBOs the opportunity to address NLI technical assistance recommendations and to plan and implement their changes. In addition, the assessment will collect satisfaction measures after each technical assistance event, and both a

comprehensive satisfaction summary and an activity summary at 6 and 12 months after initial NLI contact. A formal comparison group is not available, but comparisons of changes in key organization status measures can be made with similar data on changes collected from other CSAT KDA-funded grantees. These key status indicators include organization revenues, revenue per client, revenue sources, client flow, staff level, staff turnover, services provided, and major growth/expansion or contraction. In addition, these same indicators will be collected, in one interview, for several prior years to establish a pattern of change within specific CBOs.

A feature of the data collected in this evaluation is the inclusion of pre- and post-service perceptions of organizational functioning across 14 business and financial management domains. This information constitutes a self-assessment that is used in planning NLI services, and comprises the baseline against which follow-up measures of functioning will be assessed.

NLI anticipates receiving requests for assistance from 79 CBOs per year over the next 3 years, for a total of 237 programs. This includes up to 54 CBOs requiring long-term TA, and up to 25 CBOs requiring short-term TA. Data collection burden will be borne primarily by directors of the CBOs who will provide initial contact information (30 minutes), pre- and post-test versions of organizational self assessments (60 minutes), satisfaction forms (5 minutes each for 2 types of questionnaire), and activity summaries (10 minutes). Moreover, up to 10 focus groups will be held with staff representatives from 3 to 6 CBOs per focus group. Discussions will be held with staff representatives from CBOs receiving NLI services. An estimated 54 staff representatives will be contacted each year. Each focus group will have approximately 18 attendees. Finally, an estimated 475 attendees at training events per year will also receive a brief satisfaction questionnaire. The chart below summarizes the total three-year and annualized burden for this project.

Form	Estimated number of respondents	Responses per respondent	Hours per response	Total hours
Technical Assistance Recipients				
Initial Contact Form	237	1	.25	59
Organization Self-Assessment	237	2	.75	356
Technical Assistance Event Satisfaction	237	1	.08	19
Activity Summary	237	2	.33	156
Comprehensive NLI Satisfaction	237	1	.16	40
Focus Groups	180	1	180	180
Training Participants				
Training Participant Information Form	1,425	2	.08	228
Training Participant 30 day follow-up	1,425	1	.08	114
Total	1,842	.....	.....	1152
Annual average	614	.....	.....	384

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 7, 1999.

Richard Kopanda,
Executive Officer, SAMHSA.

[FR Doc. 99-12093 Filed 5-12-99; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-011449

Applicant: James David Williams, Plainview, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-011448

Applicant: Dean W. Halverson, Lincoln, MT

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-011639

Applicant: Tarzan Zerbini, Webb City, MO

The applicant requests a permit to export, re-export and re-import tigers (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT-011575

Applicant: Dale Norman Bigger, Humble, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-814588

Applicant: Brian McMillian, Canyon Country, CA

The applicant requests a permit to export, re-export and re-import tigers (*Panthera tigris*) and leopards (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT-011646

Applicant: Kootenai Tribe of Idaho, Bonners Ferry, ID

The applicant requests a permit to export white sturgeon (*Acipenser transmontanus*) fertilized eggs from a spawning and rearing facility in Bonners Ferry, Idaho to the Kootenay Trout Hatchery in Fort Steele, British Columbia as advised in the USFWS White Sturgeon Recovery Team Plan and would enhance the survival of the species through conservation and propagation. This notification covers activities conducted by the applicant over a five year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine

mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

PRT-011452

Applicant: Steven Tyrholm, Klamath Falls, OR

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT-011451

Applicant: Kevin S. Small, Bakersfield, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT-011326

Applicant: Edward A. Peterson, Eatontown, NJ

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

PRT-011393

Applicant: Joseph Zbylski, Englewood, CO

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT-011394

Applicant: John Conti, Grosse Pointe Farms, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT-011392

Applicant: John Gall, Chesterfield, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT-838026

Applicant: Ferris State University, MI

The applicant requests a permit to import one taxidermied and mounted donated polar bear (*Ursus maritimus*) for the purpose of public display.

Documents and other information submitted with these applications are

available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: May 10, 1999.

MaryEllen Amtower,*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 99-12140 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Intent To Revise the Comprehensive Conservation Plan and To Prepare an Environmental Impact Statement for Togiak National Wildlife Refuge, Alaska****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice and solicitation of comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) intends to revise the comprehensive conservation plan (comprehensive plan) for the Togiak National Wildlife Refuge, Alaska. The Service furnishes this notice to advise agencies and the public of its intentions, and to gather information needed to revise the plan in compliance with the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3100 *et seq.*), the National Wildlife Refuge System Administration Act, as amended (16 U.S.C. 668dd-668ee), the National Environmental Policy Act, as amended (42 U.S.C. 4321-4347) and its implementing regulations. Specifically, we would like suggestions on the scope of issues which should be addressed in the plan. We will also evaluate the wilderness review and wild and scenic rivers study that were completed previously for refuge lands and waters.

DATES: Comments should be received no later than November 1, 1999.

ADDRESSES: Address comments to Margaret Arend, Refuge Planning Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, telephone (907) 786-3393; fax (907) 786-3965.

FOR FURTHER INFORMATION: For additional information, contact Margaret

Arend, Refuge Planning, at (907)786-3393, fax (907) 786-3965.

SUPPLEMENTARY INFORMATION: The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*) was signed into law on December 2, 1980. The broad purpose of this law is to provide for the disposition and use of a variety of federally owned lands in Alaska. Section 303 of ANILCA established Togiak National Wildlife Refuge which includes the Cape Newenham National Wildlife Refuge. ANILCA lists the purposes for which Togiak Refuge was established and is managed, which are to conserve fish and wildlife populations and habitats in their natural diversity; to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; to provide the opportunity for continued subsistence uses by local residents; and to ensure water quality and necessary water quantity within the refuge. Section 304(g) of ANILCA directs the Service to prepare comprehensive plans for all refuges and to revise them "from time to time."

The National Wildlife Refuge System Improvement Act of 1997, which amended the Refuge Administration Act, also includes requirements for system wide refuge planning. Should any provisions of the Refuge Administration Act conflict with the provisions of ANILCA, the provisions of ANILCA shall prevail for refuges in Alaska. Plans identify and describe: the populations and habitats of the fish and wildlife resources of the refuge; the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge; areas of the refuge that are suitable for use as administrative sites or visitor facilities, or for visitor services; present and potential requirements for access; and significant problems which may adversely affect the populations and habitats of fish and wildlife. The plans designate areas within the Refuge according to their respective resources and values; specify programs for conserving fish and wildlife and maintaining the special values of the Refuge; specify uses which may be compatible with the major purposes of the Refuge; and identify opportunities to be provided for fish and wildlife-oriented recreation, ecological research, environmental education and interpretation of Refuge resources and values, if they are compatible with the purposes of the Refuge.

The Togiak comprehensive plan was completed in 1987. Much of the management direction in the comprehensive plan is now out of date due to changes in laws, regulations, and circumstances. In 1991 the Service completed a public use management plan which provided additional guidance for management of public use along popular sport fishing rivers. In 1997 the Refuge began to revise the public use management plan to address increasing public use of the Refuge. The Service has decided to combine the comprehensive plan and the public use management plan and prepare one revised comprehensive conservation plan and environmental impact statement for the Refuge.

This notice formally begins the revision of the comprehensive plan for the Togiak National Wildlife Refuge. In addition to soliciting public comments through this notice, public comments on issues to be addressed in the revision will be solicited through newsletters and other mailings. The comprehensive plan revision will be discussed during community meetings in Togiak, Quinhagak, Goodnews, Platinum, Manokotak, Aleknigik, Clark's Point, Dillingham and Anchorage, AK between April and November 1999. Once issues are identified, the Service will identify options to address the issues and prepare a draft comprehensive plan and draft environmental impact statement. This document is scheduled to be released for public review in the fall of 2000. After public review and comment on the draft plan and environmental impact statement, including public meetings, a final plan and environmental impact statement will be prepared and released.

In preparing and revising the plan, the Service will consult with appropriate State agencies and Native corporations and will hold public meetings to ensure that residents of local villages and political subdivisions of the State which are most affected by administration of the Refuge have the opportunity to present their views on the plan revisions. Before adopting a plan, The Service will publish a notice in the **Federal Register** and will provide an opportunity for public views and comment.

Electronic Access: Interested persons may submit comments and data by electronic mail (E-mail) to: Maggi_Arend@fws.gov. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption.

WordPerfect Version 8 or compatible file formats are acceptable.

David B. Allen,
Regional Director.

[FR Doc. 99-12050 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-020-09-1060-00]

Pony Express Resource Management Plan, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a plan amendment to the Pony Express Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management (BLM), Salt Lake Field Office, Utah is preparing an Environmental Assessment (EA) to consider a proposed amendment to the Pony Express RMP which would establish the appropriate management level (AML) and forage allocation for two wild horse herd areas (HA), Cedar Mountain and Onaqui Mountain. Forage allocation adjustments shall take into consideration the needs of wildlife and livestock.

DATES: The comment period for identification of issues for the proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before June 14, 1999.

ADDRESSES: Comments on the proposed plan amendment should be sent to Bureau of Land Management, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Alice Stephenson, Land Use Planner, Bureau of Land Management, telephone (801) 977-4317. Existing planning documents and information are available at the above address or telephone number.

SUPPLEMENTARY INFORMATION: The Pony Express RMP, approved January 12, 1990, Wild Horse Decision No. 1 set the herd sizes at: Cedar Mountain HA at 85 animals (1,020 AUMs) and Onaqui Mountain HA at 45 animals (540 AUMs). Since then, the HAs have been evaluated to determine the potential carrying capacity for wild horses. Preliminary issues include livestock grazing, wilderness study areas, off-highway vehicles, vegetation, water, and riparian. Public participation is being sought at this initial stage in the planning process to ensure the RMP

amendment addresses all issues, problems and concerns from those interested in the management of these public lands.

Linda Colville,

Acting State Director, Utah.

[FR Doc. 99-12095 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-050-1220-00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on May 20, 1999 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holycross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics discuss at the meeting will include current issues within the district including a discussion on public involvement with the Recreation Guidelines for Colorado BLM and an update on the Texas Creek OHV Area. All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday, May 20, 1999 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269-8500; TDD (719) 269-8597.

FOR FURTHER INFORMATION CONTACT: Ken Smith at 719-269-8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during

regular business hours within thirty (30) days following the meeting.

Kenneth Smith,

Acting District Manager.

[FR Doc. 99-12051 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-910-0777-29-241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice of meeting and tour.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council. The meeting and tour will be held June 11-12, 1999 in the Arizona Strip, north of the Grand Canyon. On June 11, the RAC will conduct a one-day meeting from 8:30 a.m. until approximately 3:00 p.m. The meeting will be held at the BLM Arizona Strip Field Office located at 345 East Riverside Drive in St. George, Utah. The agenda items to be covered at the meeting include review of previous meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Updates on Wild Horse and Burro Program and Barry M. Goldwater Range Withdrawal and LEIS; Report on Interagency Meeting with Forest Service and Natural Resource Conservation Service on Noxious Weed Issue; Updates on Secretarial Initiatives, regarding Proposed Arizona National Monument and Empire Cienega National Conservation Area; Presentation on BLM Land Acquisition/Exchange Program, Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion on future meetings. A public comment period will be provided at 11:30 a.m. on June 11, 1999, for any interested publics who wish to address the Council. On June 12, the RAC and BLM staff will tour the Shivwits Plateau and discuss the proposed Arizona National Monument. The tour will depart from the Arizona Strip Field Office at 7:00 a.m., and conclude approximately at 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land

Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004-2203, (602) 417-9215.

Gary D. Bauer,

Acting Arizona Associate State Director.

[FR Doc. 99-12094 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-130-1020-00; GP9-0184]

Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

NOTICE: Notice of Field Tour of the Eastern Washington Resource Advisory Council.

ACTION: Field tour of the Eastern Washington Resource Advisory Council; June 3, 1999, in Spokane, Washington.

SUMMARY: The Eastern Washington Resource Advisory Council will take a field tour on June 3, 1999. The tour will start at 8:30 a.m., at the Spokane District Office of the Bureau of Land Management (BLM), 1103 N. Fancher, Spokane, Washington 99212-1275. The Council will visit BLM administered lands in Spokane and Lincoln Counties, Washington. Topics to be addressed include recreation activities and revegetation issues. The tour will conclude no later than 4:00 p.m. The tour is open to the public but transportation will not be provided.

FOR FURTHER INFORMATION CONTACT: Joseph Buesing, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212-1275; or call 509-536-1200.

Dated: May 7, 1999.

Joseph K. Buesing,

District Manager.

[FR Doc. 99-12096 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-050-1430-01, COC-58098, COC-62304]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Conejos and Lake Counties, CO.

SUMMARY: The following described land has been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value:

COC-58098

T.36N., R.6E., N.M.P.M., Section 24: Lot 13, comprising approximately 3.21 acres.

COC-62304

T.9S., R.81W., Sixth P.M., Section 36: that portion of the E2E2 lying easterly of the Lake Placer (MS 2358) and the Law Placer (MS 4752) containing 1 acre, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The land in parcel COC-58098 will be offered to Hal and Mindy Wilson. This sale will be made to resolve an inadvertent trespass situation. The land in COC-62304 will be offered to Scott Peregoy. The parcel is a small irregular parcel interfering with use of adjacent residential property. It has been determined that the subject parcels contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests. The patents, when issued, will contain certain reservations to the United States. Detailed information concerning this sale, including the prices, patent reservations, etc. will be available upon request.

DATES: Interested parties may submit comments to the District Manager until June 20, 1999.

ADDRESSES: Bureau of Land Management, Canon City District, 3170 E. Main St., Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Bill Miller, Realty Specialist, (719) 274-6308 in LaJara, or Stu Parker, (719) 269-8546 in Canon City.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the Colorado State Director, who may vacate, modify, or continue this realty action.

Kenneth L. Smith,

Acting District Manager.

[FR Doc. 99-12126 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-057-1430-01] COC-49757]

Notice of Realty Action—Fremont and Chaffee Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COC-49757, Recreation and Public Purpose Classification, Application to Amend Lease, and Opening Order, for the Arkansas Headwaters Recreation Area Recreation and Public Purposes Act Lease, Chaffee, and Fremont Counties, Colorado.

SUMMARY: After completing an environmental assessment the following public lands are classified as suitable for lease under the Recreation and Public Purposes Act (R&PP) of July 14, 1926, as amended, 43 U.S.C. 869 et. seq., and the regulations thereunder 43 CFR 2740 and 2912. The public lands involved are segregated from the public lands including the general mining laws, except for the R&PP Act.

Sixth Principal Meridian, Colorado

T. 14 S., R. 78 W., section 23 that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ MW $\frac{1}{4}$ west of Chaffee County Road 102 consisting of approximately 12 acres known as the Collegiate Peaks Gateway, Chaffee County.

T. 15 S., R. 78 W., section 12 SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ consisting of approximately 10 acres known as Ruby Mountain, Chaffee County.

New Mexico Principal Meridian, Colorado

T. 49 N., R. 10 E., section 28, that portion of lots 6, 7, 10, and 11 lying north of U.S. Highway 50 right of way and south of the Union Pacific Railroad right of way consisting of approximately 35 acres known as Point Bar, Fremont County.

T. 48 N., R. 11 E., section 35, that portion of lots 17, 18, 19, and 20 lying south of the Arkansas River and north of the U.S. Highway 50 right of way consisting of approximately 5 acres known as Canyon Trading Post, Fremont County.

These four properties will be leased as part of the Arkansas Headwaters Recreation Area administered jointly between the BLM and the Colorado State Division of Parks and Outdoor Recreation. Normal terms, conditions, and standard stipulations will apply. In addition, the lease will be subject to valid existing rights, and a program of monitoring stream banks, riparian and wetland vegetation, soil erosion, runoff sediment, upland vegetation, and the success of any rehabilitation projects. The following public lands have been leased under the Recreation and Public Purposes Act. The environmental assessment also determined that these parcels should be removed from

the lease. The lease is now amended and the lease of these parcels is terminated to that extent and the associated classifications are hereby terminated as authorized under 43 CFR 2741.5(h)(2):

Sixth Principal Meridian, Colorado

T. 18 S., R. 72 W., section 21, a portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ containing approximately 2 acres known as Bootlegger, Fremont County, T. 18 S., R. 72 W., section 14, a portion of lot 2 containing approximately 2 acres known as Parkdale, Fremont County.

The following lands were classified but never leased as planned under the Recreation and Public Purposes Act. The classification is hereby terminated as authorized by 43 CFR 2741.5(h)(2):

Sixth Principal Meridian, Colorado

T. 18 S., R. 71 W., section 18, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and portions of the W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying west of the threat of the Arkansas River containing approximately 140 acres known as the Parkdale South parcel.

At 10 a.m. on July 1, 1999, the three parcels described above known as Bootlegger Parkdale, and Parkdale South shall be opened to the operation of public land laws, including the United States mining laws, subject to valid existing rights, to the extent that the existing R&PP classification segregated the sites.

DATES: Interested parties may submit comments on this action on or before June 15, 1999. Objections will be reviewed and this realty action may be sustained, vacated, or modified. Except as vacated or modified, this realty action will become final effective July 1, 1999.

ADDRESSES: District Manager, Canon City District Office, or Area Manager, Royal Gorge Resource Area, 3170 E. Main St., Canon City, CO 81212. Telephone (719) 269-8500; TDD (719) 269-8597.

FOR FURTHER INFORMATION CONTACT: David Hallock, Realty Specialist Phone: (719) 269-8536.

SUPPLEMENTARY INFORMATION:

Classification comments—interested parties may submit comments involving the suitability of the land for the purposes stated. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application comments—interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper

administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposals.

This action is in response to applications by the Colorado State Division of Parks and Outdoor Recreations. Lease of the lands will not be authorized until after the classification becomes effective. Lease of the lands for recreational use would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease issuance.

3. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Adrian Neisius,

Acting District Manager.

[FR Doc 99-12127 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Lyndon B. Johnson National Historical Park, Texas

AGENCY: National Park Service, Interior.

ACTION: Availability of final environmental impact statement and general management plan for Lyndon B. Johnson National Historical Park.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement and General Management Plan (FEIS/GMP) for Lyndon B. Johnson National Historical Park, Texas.

DATES: A 30 day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP.

ADDRESSES: Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Lyndon B. Johnson National Historical Park, 100 Ladybird Lane, Johnson City, Texas 78636; Telephone: (830) 868-7128. Planning and Environmental Quality, Intermountain Support Office-Denver, National Park Service, P.O. Box 25287, Denver, Co. 80225-0287;

Telephone: (303) 969-2851 or (303) 969-2832.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, DC 20240; Telephone: (202) 208-6843.

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes three alternatives for management, use, and with special concern for the historic character, structures, and landscape. The alternatives were formulated to address problems and management concerns related to the future operation of the LBJ Ranch district following Mrs. Johnson's passing, as well as concerns related to visitor use, resource management, and facility development.

Alternative 1, the no action alternative, is a continuation of the present management course, maintaining historic structures but not upgrading interpretation or increasing staff. Alternative 2, reflects a modest increase in the level of park maintenance, interpretation, and administration with limited visitation of the Texas White House, some additional staffing, and expanded educational outreach into the local community. Alternative 3, the National Park Service's proposed action, envisions a comprehensive change to the overall visitor experience with the Texas White House open on a regularly scheduled basis, increased educational outreach, new facilities for visitor contact, maintenance, ranching, and park interpretive staff, and a new emphasis on the Johnson City unit.

The FEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on archeological and historic resources, soils, water resources and water quality, floodplains, economy and social environment, and visitor use/experience and interpretation.

FOR FURTHER INFORMATION: Contact Superintendent, Lyndon B. Johnson National Historical Park, at the above address and telephone number.

Dated: May 5, 1999.

John E. Cook,

Director, Intermountain Region, National Park Service.

[FR Doc. 99-12086 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-10-P

DEPARTMENT OF THE INTERIOR

National Park Service

Intent to Prepare a Draft Environmental Impact Statement on the General Management Plan for Carl Sandburg Home National Historic Site, North Carolina

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement on the General Management Plan for Carl Sandburg Home National Historic Site, North Carolina.

SUMMARY: The National Park Service will prepare an Environmental Impact Statement (EIS) to accompany its General Management Plan (GMP) for Carl Sandburg Home National Historic Site. The Service will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Carl Sandburg Home National Historic Site. Suggestions and ideas for managing cultural and natural resource conditions and visitor experiences at the national historic site are encouraged. The comment period for each of these meetings will be announced at the meetings and will be published on the General Management Plan web site for Carl Sandburg National Historic Site at <http://www.nps.gov/carl>.

DATES: Locations, dates, and times of public scoping meetings will be published in local newspapers and may also be obtained by calling Carl Sandburg Home National Historic Site. This information will also be published on the General Management Plan web site for Carl Sandburg Home National Historic Site.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service. Superintendent, Carl Sandburg Home National Historic Site, 1928 Little River Rd., Flat Rock, North Carolina 28731; Telephone: 828-693-4178.

SUPPLEMENTARY INFORMATION: The National Park Service has announced that an EIS on GMPs will be prepared for all park units. To comply with this policy, a formal scoping period is announced.

Comments are invited on any issue believed to be relevant to the management of Carl Sandburg Home National Historic Site and should be submitted to the Superintendent whose address is given above. Public scoping meetings will be held in the local area and the dates and times may be obtained from local newspapers or by

calling Carl Sandburg Home National Historic Site. We urge that comments and suggestions be made in writing.

Issues currently being considered include determining the most appropriate use of existing temporary structures, management of increased recreational use, coping with tremendous residential development around the park, and how to best fulfill the park's interpretive mission. Central to these issues is the determination of the national historic site's mission, purpose, and significance. The plan will identify desired future conditions for cultural and natural resources and visitor experiences for various management units within Carl Sandburg Home National Historic Site. A draft GMP/EIS will be prepared and presented to the public for review and comment, followed by preparation and availability of the final GMP/EIS.

Dated: May 9, 1999.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 99-12085 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

Wilson's Creek National Battlefield, General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare a General Management Plan and Environmental Impact Statement for Wilson's Creek National Battlefield, Missouri.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an associated Environmental Impact Statement (EIS) for Wilson's Creek National Battlefield, Missouri, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including a newsletter and open houses. The NPS will conduct

a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters.

DATES: Public scoping meetings will be held on May 25 and 26. On Tuesday, May 25 the meeting will be held from 7 p.m. to 9 p.m. at the Wilson's Creek National Battlefield Visitor Center, 6424 West Farm Road 182 (intersection of Farm Road 182 and ZZ Highway) Republic, Missouri. On Wednesday, May 26 the meeting will be held from 7 p.m. to 9 p.m. at the Busch Municipal Building, 840 Boonville, Springfield, Missouri.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters should be directed to: Superintendent, Wilson's Creek National Battlefield, 6424 West Farm Road 182, Republic, Missouri 65738.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Sullivan, Wilson's Creek National Battlefield, 6424 West Farm Road 182, Republic, Missouri 65738, 417-882-9144, gary_sullivan@nps.gov.

SUPPLEMENTARY INFORMATION: Wilson's Creek National Battlefield was established to preserve one of the first major Civil War Battlefields and the site of the first Union General killed in the War. The public's enjoyment of the Battlefield is facilitated by providing a safe and accessible visitors center, museum, research library, roads, and trails; preserving and restoring the 1861 rural, agricultural setting, and encouraging its preservation around the park. The park also provides habitat for endangered species, and recreational opportunities that do not impair resource preservation, and the commemoration and interpretation of the Battle. Management of the Battlefield currently is guided by a 1977 master plan, which has become outdated.

In accordance with NPS Park Planning policy, the GMP will ensure the Battlefield has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for the Battlefield will be conducted in accordance with requirements of the NEPA (42 U.S.C.

4371 *et seq.*), NEPA regulations (40 CFR part 1500-1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The National Park Service estimates the draft GMP and draft EIS will be available to the public by September 2000.

Dated: May 6, 1999.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 99-12088 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-10-P

DEPARTMENT OF THE INTERIOR

National Park Service

Public Meeting and Request for Comments on Development of a Wilderness Management Plan for Gulf Islands National Seashore, Mississippi

AGENCY: National Park Service, Interior.

ACTION: Notice of public meetings and request for comments on development of a wilderness management plan for Gulf Islands National Seashore, Mississippi.

SUMMARY: The National Park Service will hold a series of meetings to gather information to be used in the development of a Wilderness Management Plan for Gulf Islands National Seashore. The seashore was established by Congress on January 8, 1971, and consists of several barrier islands along the coast of Mississippi and Florida. On November 10, 1978, Congress designated the Mississippi islands of Horn and Petit Bois to be included in national Wilderness. The information gathered will be used in developing a management plan for the wilderness. Public comments will be accepted at the meetings and in written and electronic form until June 6, 1999.

DATES: The meeting dates are:

1. April 26, 1999, 7 p.m. to 10 p.m., Washington High School (Cafeteria), 6000 College Parkway, Pensacola, FL 32504
2. April 28, 1999, 7 p.m. to 10 p.m., Mississippi Gulf Coast Community College, Jackson County Campus (Fine Arts Auditorium), 2300 U.S. Highway 90, Gautier, MS 39553
3. April 29, 1999, 7 p.m. to 10 p.m., J.L. Scott Marine Education Center and Aquarium (Auditorium), 115 Beach Boulevard, U.S. Highway 90, Biloxi, MS 39530
4. May 3, 1999, 3 p.m. to 6 p.m. and 7 p.m. to 10 p.m., Jackson State University (3 p.m.—Recital hall, 7

p.m.—Choir room), 1400 J.R. Lynch Street, Jackson, MS 39217

5. May 4, 1999, 3 p.m. to 6 p.m. and 7 p.m. to 10 p.m. University of New Orleans-University Center (Room #242-Cabildo), Alumni Drive, New Orleans, LA 70148
6. May 6, 1999, 3 p.m. to 6 p.m. and 7 p.m. to 10 p.m., Martin Luther King, Jr. National Historic Site (Visitor Center), 522 Auburn Avenue, NE, Atlanta, GA 30312

FOR FURTHER INFORMATION CONTACT: Riley Hoggard, (850) 934-2617.

SUPPLEMENTARY INFORMATION: Written comments should be mailed to Gulf Island National Seashore, Attention: Wilderness Coordinator, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561. Comments must be received on or before June 6, 1999. Comments may also be hand-delivered to the same address.

Electronic comments and other data may be submitted by sending electronic mail (e-mail) to guis_wilderness_comments@nps.gov. Electronic comments should be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Dated: May 5, 1999.

W. Thomas Brown,

Acting Regional Director, Southeast Region.
[FR Doc. 99-12084 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on May 18, 1999, to discuss several issues including: a discussion of the Battle Creek project MOU, a decision for funding of a 1998 proposal for Butte Creek, an implementation and tracking system update, and other issues. Additionally, a workshop to discuss the Battle Creek MOU will occur on May 11, 1999. These meetings are open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:00 a.m. to

11:30 p.m. on Tuesday, May 18, 1999. The Battle Creek MOU workshop will occur on May 11, 1999, from 9:00 a.m. to 11:00 a.m.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814. The Battle Creek MOU workshop will meet at Pacific Gas and Electric Company's office, 2740 Gateway Oaks, Sacramento, CA.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657-2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653-6952 or TDD (916) 653-6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal Government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice

to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: May 3, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.
[FR Doc 99-12097 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-94-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Glen Canyon Technical Work Group was formed as an official subcommittee of the Glen Canyon Dam Adaptive Management Work Group. The TWG members were named by members of the AMWG and provide advice and information for the AMWG to act upon. The AMWG uses this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center (GCMRC) science program, and other direction as requested by the Secretary. **DATES AND LOCATIONS:** The Glen Canyon Technical Work Group will conduct three (3) open public meetings as follows:

Phoenix, Arizona—June 8-9, 1999. The meeting will begin at 10:00 a.m. and conclude at 5:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 3:00 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Room A (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting is to address administrative issues, discuss the agenda for the AMWG meeting to be held on July 21-22, 1999,

and discuss the process to review management objectives and information needs. In addition, the following items will be discussed: Adaptive Management Program guiding document, tribal participation update, Kanab ambersnail workshop, GCMRC Request for Proposal status, Lake Powell plan, fiscal year 2001 budget, fiscal year 2000 annual plan, experimental flows ad-hoc report, status of pit tag data files, temperature control device, programmatic compliance, and basin hydrology.

Phoenix, Arizona—July 20, 1999. The meeting will begin at 1:00 p.m. and conclude at 4:00 p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel located at 1515 North 44th Street in Phoenix, Arizona.

Agenda: The purpose of the meeting is to address any outstanding issues and discuss the items on the AMWG agenda for the meeting the following day.

Phoenix, Arizona—July 22, 1999. The meeting will begin at 1:00 p.m. and conclude at 3:00 p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel located at 1515 North 44th Street in Phoenix, Arizona.

Agenda: The purpose of the meeting is to review the action items for the TWG from the previous days AMWG meetings.

DATES AND LOCATION: The Glen Canyon Dam Adaptive Management Work Group will conduct an open public meeting as follows:

Phoenix, Arizona—July 21–22, 1999. The meeting will begin at 9:30 a.m. and conclude at 5:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 12 noon on the second day. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel located at 1515 North 44th Street in Phoenix, Arizona.

Agenda: The purpose of the meeting is to address administrative issues and discuss the process to review management objectives and information needs. The following items will also be discussed: Adaptive Management Program guiding document, Adaptive Management Program strategic plan, organization location of the GCMRC, status of filling the GCMRC director position, tribal participation update, report on flood avoidance ad-hoc activities, programmatic agreement five-year budget, National Research Council report, Kanab ambersnail workshop, GCMRC report on activities, fiscal year 2001 budget, fiscal year 2000 annual plan, experimental flows ad-hoc report, temperature control device, programmatic environmental compliance, and basin hydrology.

Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings. To allow full consideration of information by the TWG and AMWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3715; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov at least FIVE (5) days prior to the meetings. Any written comments received will be provided to the TWG and AMWG members at the meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3715; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov.

Dated: May 6, 1999.

Eluid L. Martinez,
Commissioner, Bureau of Reclamation.
[FR Doc. 99–12046 Filed 5–12–99; 8:45 am]
BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–31]

Bonds Discount Pharmacy; Revocation of Registration

On April 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Bonds Discount Pharmacy (Respondent) of Golden, Mississippi notifying it of an opportunity to show cause as to why DEA should not revoke the pharmacy's DEA Certificate of Registration BBB4240723 pursuant to 21 U.S.C. 824(a)(2) and (a)(4) and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that the pharmacy's owner was convicted of a felony related to controlled substances and that the pharmacy's continued registration would be inconsistent with the public interest.

By letter dated May 20, 1998, Respondent, through counsel, filed a request for a hearing and the matter was docketed before Administrative Law Judge Gail A. Randall. In the midst of prehearing proceedings, the Government filed a Request for Stay of Proceedings and a Motion for Summary Disposition on September 22, 1998. The Government alleged that on July 23, 1998, the Mississippi Board of

Pharmacy (Board) issued an order suspending the pharmacist's license of Michael Bonds, Respondent's owner and pharmacist; indicating that Respondent's pharmacy permit was considered null and void; and placing Respondent in a "closed pharmacy" status. The Government argued that as a result, Respondent is not authorized to handle controlled substances in Mississippi and therefore DEA cannot maintain its registration.

Respondent was given until October 13, 1998 to file its response to the Government's motion. On October 16, 1998, Respondent filed several documents, including an Order issued by the Supreme Court of Mississippi granting Mr. Bonds' Petition for Consideration by the Full Court relating to his criminal conviction. On October 19, 1998, Respondent filed its Response to Motion for Summary Disposition, asking that the Government's motion be denied and all proceedings stayed in light of Mr. Bonds' pending challenge to his criminal conviction. Respondent argued that because all matters relating to Mr. Bonds' conviction are not yet concluded, DEA should not revoke Respondent's registration.

Apparently at the same time Respondent was filing its response to the Government's motion, Judge Randall issued an Order on October 19, 1998, giving Respondent until October 27, 1998, to file a response.

On October 27, 1998, Judge Randall issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in Mississippi; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. On the same day as Judge Randall issued her Opinion and Recommended Ruling, Respondent filed an Amended Response to Motion for Summary Disposition, essentially arguing that Mr. Bonds is "in the posture of regaining his license to practice pharmacy."

Neither party filed exceptions to Judge Randall's Opinion and Recommended Decision, and on December 1, 1998, she transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

As a preliminary matter, the Deputy Administrator must determine whether or not to consider Respondent's Amended Response to Motion for Summary Disposition filed on October 30, 1998. Given Judge Randall's October 19, 1998 Order, there could arguably be some confusion as to whether Respondent was permitted to file a second response. Therefore, the Deputy Administrator has considered this filing in rendering his decision in this matter.

The Deputy Administrator finds that by order issued July 23, 1998, the Board indicated that it considered Respondent's Mississippi pharmacy permit null and void and placed it in a "closed pharmacy" status. In its responses to the Government's motion, Respondent argued that because Mr. Bonds has a motion pending before the Supreme Court of Mississippi regarding his criminal conviction, DEA should not take action at this time. However, Respondent did not dispute that it was not currently authorized to handle controlled substances.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the state in which it conducts business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See, Andrew Mobley, Inc., d/b/a Medicine Shoppe*, 54 FR 16,421 (1989); *Wingfield Drugs, Inc.*, 52 FR 27,070 (1987); *Tony's Discount Store, Anthony Sekul, Proprietor*, 51 FR 12,578 (1986).

Here it is clear that Respondent's pharmacy permit is considered null and void. Consequently, it is reasonable to infer that it is not authorized to handle controlled substances in Mississippi, where it is registered with DEA. Since Respondent lacks this state authority, it is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. It is well-settled that where there is no material question of fact involved, or when the facts are agreed upon, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *See Gilbert Ross, MD.*, 61 FR 8664 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993); *Philip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984). Here, there is no dispute concerning the material fact that Respondent is not currently authorized

to handle controlled substances in Mississippi.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BB4240723, previously issued to Bonds Discount Pharmacy, be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective June 14, 1999.

Dated: May 6, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99-12035 Filed 5-12-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Joseph M. Burt, M.D.; Revocation of Registration

On July 29, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joseph M. Burt, M.D., of Murrels Inlet, South Carolina, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BB0955774 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of South Carolina. The order has notified Dr. Burt that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent to Dr. Burt by registered mail to his DEA registered address, but was returned to DEA unclaimed. Attempts by DEA to locate a current address for Dr. Burt were unsuccessful.

The Deputy Administrator finds that DEA has made numerous attempts to locate Dr. Burt and has determined that his whereabouts are unknown. It is evident that Dr. Burt is no longer practicing medicine at the address listed on his DEA Certificate of Registration. The Deputy Administrator concludes that considerable effort has been made to serve Dr. Burt with the Order to Show Cause without success. Dr. Burt is therefore deemed to have waived his opportunity for a hearing. The Deputy

Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on June 10, 1997, the State Board of Medical Examiners of South Carolina (Board) suspended Dr. Burt's license to practice medicine. As a result, on July 2, 1997 the South Carolina Department of Health, Bureau of Drug Control terminated Dr. Burt's state controlled substance registration. Thereafter, on July 20, 1998, the Board issued a Final Order revoking Dr. Burt's license to practice medicine in South Carolina.

The Deputy Administrator finds that Dr. Burt is not currently authorized to handle controlled substances in South Carolina, the state where he is registered with DEA. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite had been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Burt is not currently authorized to handle controlled substances in the State of South Carolina. Therefore, Dr. Burt is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BB0955774, previously issued to Joseph M. Burt, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective June 14, 1999.

Dated: May 6, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99-12036 Filed 5-12-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98-9]

Robert A. Leslie, M.D.; Denial of Application

On December 23, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert A. Leslie, M.D., (Respondent) of Irvine, California, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated January 12, 1998, Respondent, acting pro se, requested a hearing on the issues raised by the order to show cause. Following prehearing procedures, a hearing was held in Los Angeles, California on April 22, 1998, before Administrative Law Judge Gail A. Randall. At the hearing the Government called a witness to testify and Respondent testified on his own behalf. Both parties introduced documentary evidence. After the hearing, the Government submitted proposed findings of fact, conclusions of law and argument and Respondent submitted a document entitled "Legal Issues". On October 9, 1998, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending that Respondent's application for a DEA Certificate of Registration be granted subject to the requirement that he maintain a log of his controlled substance handling for three years. Both the Government and Respondent timely filed exceptions to Judge Randall's Recommended Rulings, Findings of Fact, Conclusions of Law and Decision. Thereafter, on November 24, 1998, Judge Randall transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the findings of fact and conclusions of law of the Administrative Law Judge, but does not adopt Judge Randall's recommended ruling.

The Deputy Administrator finds that Respondent previously possessed DEA Certificate of Registration AL0033136. On June 21, 1989, an Order to Show Cause was issued proposing to revoke that Certificate of Registration. Initially

Respondent requested a hearing, but subsequently withdrew the request and a final order was issued by the then-Acting Administrator revoking Respondent's registration, effective August 17, 1990. See 55 FR 29,278 (July 18, 1990).

In February 1992, Respondent submitted an application for a new DEA Certificate of Registration. An Order to Show Cause was issued on May 13, 1993, proposing to deny this application. Following a hearing before Administrative Law Judge Mary Ellen Bittner, the then-Deputy Administrator adopted Judge Bittner's recommended ruling and denied Respondent's application for registration effective March 15, 1995. See 60 FR 14,004 (March 15, 1995).

In the prior proceeding, the then-Deputy Administrator found that on October 9, 1986, Respondent was found guilty, following a jury trial, of eight counts of unlawfully prescribing, administering, furnishing or dispensing controlled substances between July 1985 and January 1986. These convictions were affirmed by the Superior Court of the State of California for the County of Los Angeles. Thereafter, effective March 23, 1990, the California Board of Medical Quality Assurance (Board) revoked Respondent's medical license, stayed the revocation, suspended his license to practice medicine for 90 days, and placed him on probation for five years. The Board's decision was subsequently affirmed by the California Court of Appeals with the Court finding that Respondent's appeal was frivolous because it was merely a collateral attack on his convictions and fining Respondent \$10,000. The Court stated that Respondent must "accept responsibility for his actions."

The then-Deputy Administrator found that at the prior hearing, Respondent attacked his criminal convictions. Judge Bittner and then-Deputy Administrator found that Respondent's convictions were *res judicata* and therefore Respondent was precluded from relitigating the matter. In his final order, the then-Deputy Administrator noted that:

The administrative law judge found that during the administrative hearing, although Respondent was free to offer new evidence that he would never again engage in the type of conduct that resulted in his conviction, he failed to do so. The administrative law judge also found that while Respondent offered evidence and expended time arguing the invalidity of his criminal convictions, he offered no evidence of remorse for his prior conduct, that he has taken rehabilitative steps, or that he recognized the severity of his actions. The administrative law judge concluded that Respondent is either

unwilling or unable to discharge the responsibilities inherent in a DEA registration, and therefore, recommended that his application for DEA registration be denied. *Id.*

Respondent filed a Petition for Review of this final order with the United States Court of Appeals for the Ninth Circuit. On August 5, 1996, the court denied Respondent's petition.

On December 13, 1996, Respondent submitted an application for a new DEA registration. That application is the subject of these proceedings. The Deputy Administrator concluded that the then-Deputy Administrator's final order published on March 15, 1995, regarding Respondent is *res judicata* for purposes of this proceeding. See *Stanley Alan Azen, M.D.*, 61 FR 57,893 (1996) (where the findings in a previous revocation proceeding were held to be *res judicata* in a subsequent administrative proceeding.) The then-Deputy Administrator's determination of the facts relating to the previous denial of Respondent's application for registration is conclusive. Accordingly, the Deputy Administrator adopts the March 15, 1995 final order in its entirety. The Deputy Administrator concluded that the critical consideration in this proceeding is whether the circumstances, which existed at the time of the prior proceeding, have changed sufficiently to support a conclusion that Respondent's registration would be in the public interest.

The Deputy Administrator finds that as of the date of the hearing, Respondent was practicing medicine at three different clinics in California, and there were no restrictions on his medical license. In 1998, Respondent was awarded a fellowship in the American Contemporary Society of Medicine and Surgery. In the three years preceding the hearing, Respondent had been nominated for "Who's Who," "Who's Who in the West," "Who's Who in Europe," and "Who's Who in the Midwest," for outstanding achievement.

Respondent testified that he only needs to use controlled substances in his practice on rare occasions. Respondent further testified that he is "very conservative in [his] approach to (prescribing)" and "he ha(s) a dislike for controlled substances." However, he also testified that it is difficult for him to find employment without a DEA registration.

When given the opportunity to explain his past behavior, Respondent continued to blame others for his criminal convictions. Specifically Respondent alleged that his then-employer ran "a crooked operation,"

and Respondent's name had been forged on prescriptions. He contended that his convictions were affirmed on appeal due to ineffective counsel, and a Government witness "perjured" himself during DEA's 1993 administrative hearing.

The Government argued that Respondent's application should be denied based upon the prior Board action, the underlying facts that led to Respondent's conviction, Respondent's conviction, and Respondent's continued denial of any wrongdoing which demonstrates a potential threat to the public health and safety. The Government asserted that there has been no change in Respondent's attitude since the 1993 hearing; that he fails to recognize the severity of his past conduct or to express remorse or plans for rehabilitation; that he continues to argue the errors of his prior judicial proceedings; and as a result, he continues to avoid taking responsibility for his own culpable behavior.

Respondent argued that he should be granted a DEA registration because his criminal convictions should not be relied upon since they were defective. He further asserted that a narcotics registration in California is a vested right. Respondent contended that if granted a DEA registration, he would be more conservative in his prescribing practices.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that the granting of a registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable state, federal, or local laws relating to controlled substances.

- (5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See

Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

Regarding factor one, in 1990 the Board revoked Respondent's medical license, stayed the revocation, but suspended his license for 90 days and then placed it on probation for five years. However, it is undisputed that Respondent's California medical license is currently unrestricted. But state licensure is a necessary but not sufficient condition for registration, and therefore this factor is not dispositive.

Factors two and four, Respondent's experience in dispensing controlled substances and compliance with applicable controlled substance laws are relevant in determining whether Respondent's registration would be inconsistent with the public interest. Between July 1985 and January 1986, Respondent prescribed or dispensed controlled substances to undercover operatives who were not under treatment for a pathology or condition other than addiction to a controlled substance. Although Respondent has continued to argue that he has done nothing wrong, a jury convicted him of eight counts of unlawfully prescribing controlled substances, and this judgment was affirmed on appeal. Therefore, the Deputy Administrator concludes that Respondent clearly improperly handled controlled substances in the past and failed to comply with laws relating to controlled substances.

Respondent has not handled controlled substances since his DEA registration was revoked in 1990. He now uses the non-controlled substance Nubain for the treatment of pain.

As to factor three, Respondent was convicted of eight misdemeanor counts of illegally prescribing or dispensing controlled substances. These convictions were affirmed on appeal. While Respondent continues to profess his innocence and to try to introduce evidence to challenge the validity of the convictions, the convictions cannot be relitigated in this forum. Therefore, this factor is relevant in determining the public interest since Respondent has been convicted of controlled substance related offenses.

Regarding factor five, the Deputy Administrator concurs with Judge Randall's finding that it is "disturbing that the Respondent continues to argue about his prior criminal convictions, despite Judge Bittner's and a prior Acting (sic) Deputy Administrator's previous comments concerning the importance of rehabilitation evidence. The Respondent continues to blame others for his misconduct and refuses to accept responsibility for his actions."

After reviewing the record, Judge Randall concluded that this is a difficult case however she recommended that Respondent's application be granted subject to the requirement that he maintain a log of his controlled substance handling for three years. In making this recommendation, Judge Randall found it significant that Respondent was forthcoming on his application for registration regarding his convictions and the prior DEA action; that he has continued to make valuable contributions to the medical profession; that he has continued to participate in continuing medical education; that there are no restrictions on his California medical license; that Respondent has become more conservative in this approach to prescribing controlled substances; that Respondent's convictions were 12 years ago and there are no new allegations of Respondent improperly handling controlled substances; and that Respondent has been actively practicing medicine at three different clinics and there have been no complaints or adverse actions taken against his medical license. Judge Randall recommended that Respondent be granted a restricted registration in order to give him the opportunity to demonstrate his ability to effectively handle controlled substances while providing a measure of protection to the public.

Respondent filed exceptions to Judge Randall's recommended ruling. Instead of challenging aspects of the judge's decision, Respondent continued to challenge the validity of his convictions and the previous denial of his application for a DEA Certificate of Registration. As previously stated these decisions are *res judicata* and as a result, the Deputy Administrator finds no merit to Respondent's exceptions.

In its exceptions, the Government disagreed with several mitigating factors considered by Judge Randall. First, the Government argued that the fact that Respondent disclosed his convictions and the prior DEA actions on his application should not be considered a mitigating factor. The Government pointed out that Respondent answered truthfully on his previous application and that application was nonetheless denied. The Deputy Administrator agrees with the Government. An applicant is required to fully disclose any convictions and/or prior action by DEA or the state on applications for registration. The fact that Respondent did so does not demonstrate that he can now be trusted to responsibly handle controlled substances.

Second, the Government took exception to Judge Randall's finding that Respondent has continued to make valuable contributions to the medical profession. The Government argued "that a factor is not material in deciding whether a DEA registration application should be granted." The Deputy Administrator concludes that it is appropriate to consider what a registrant/applicant has done professionally since his/her misconduct. However in this case, the Deputy Administrator finds it significant that Respondent has continued to make valuable contributions to the medical profession despite not being able to handle controlled substances. The Deputy Administrator concludes that this factor does not support granting Respondent a DEA registration, since it appears that Respondent can make such contributions without a DEA registration.

Next the Government disagreed with Judge Randall's reliance on Respondent's assertion that he has become more conservative in his handling of controlled substances as a mitigating factor. The Government contended that Respondent's assertion is "not necessarily credible in light of Respondent's adamant denial of the conduct underlying his criminal convictions." The Government further contended that Respondent has not handled controlled substances since his DEA registration was revoked. The Deputy Administrator agrees with the Government. Since Respondent has not handled controlled substances since 1990, there is no evidence that Respondent is more conservative in his handling of such substances, and in light of his failure to accept responsibility for his past actions, the Deputy Administrator is not convinced that Respondent will be more conservative in the future.

Further the Government took exception to Judge Randall's reliance on the fact that Respondent's convictions occurred 12 years ago and no new allegations of improper handling of controlled substances or adverse actions against Respondent's medical license were introduced in this matter. The Government argued that no such allegations were made in the previous proceeding regarding Respondent's last application for registration and that application was denied. The Deputy Administrator notes that Respondent has not been authorized to handle controlled substances since 1990 so presumably he has not had the opportunity to mishandle controlled substances.

The Deputy Administrator agrees with Judge Randall that passage of time alone is not dispositive, however it is a factor to be considered. *See Norman Alpert, M.D.*, 58 FR 67,420. But, the Deputy Administrator also notes that DEA has previously held that "(t)he paramount issue is not how much time has elapsed since (the Respondent's) unlawful conduct, but rather, whether during that time (the) Respondent has learned from past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with DEA registration." *See John Porter Richard, D.O.*, 61 FR 13,878 (1996), *Leonardo v. Lopez, M.D.*, 54 FR 36,915 (1989). In this case, it is clear from Respondent's continued denials of wrongdoing that he has not learned from his past mistakes and other than saying that he is more conservative now, he has not demonstrated that he would handle controlled substances properly in the future.

The Deputy Administrator disagrees with Judge Randall's recommended ruling that granting Respondent a restricted registration would be appropriate. Other than the passage of time, the circumstances which existed at the time of the prior proceeding have not changed sufficient to warrant issuing Respondent a DEA registration. Respondent continues to fail to acknowledge wrongdoing or accept responsibility for his actions. Therefore, the Deputy Administrator is not convinced that Respondent has been rehabilitated and would properly handle controlled substances in the future, even on a restricted basis. As a result, the Deputy Administrator concludes that Respondent's registration with DEA would be inconsistent with the public interest at this time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration, executed by Robert A. Leslie, M.D., be, and it hereby is, denied. This order is effective June 14, 1999.

Dated: May 6, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99-12038 Filed 5-12-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA-172N]

Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Clandestine Production of Controlled Substances or Listed Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final notice.

SUMMARY: On October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) was signed into law. The MCA makes it unlawful for any person to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, with reckless disregard for the illegal uses to which such laboratory supply will be put. Individuals who violate this provision are subject to a civil penalty of not more than \$25,000; businesses which violate this provision are subject to a civil penalty of not more than \$250,000. The term "laboratory supply" is defined as "a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals." This final notice contains the list of "laboratory supplies" which constitutes the Special Surveillance List that was required to be published by the Attorney General pursuant to Title 21, United States Code, Section 842(a). **EFFECTIVE DATE:** May 13, 1999.

FOR FURTHER INFORMATION CONTACT:

Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION: On October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) was signed into law. The MCA broadens controls on listed chemicals used in the production of methamphetamine and other controlled substances, increases penalties for the trafficking and manufacturing of methamphetamine and listed chemicals, and expands regulatory controls to include the distribution of lawfully marketed drug products which contain the listed chemicals ephedrine, pseudoephedrine and phenylpropanolamine. The MCA also

provides for the publication of a Special Surveillance List by the Attorney General. 21 U.S.C. 842(a). The Special Surveillance List identifies laboratory supplies which are used in the manufacture of controlled substances or listed chemicals. The MCA defines "laboratory supply" as "a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals." 21 U.S.C. 842(a).

The Deputy Administrator of the DEA, in a December 1, 1998, **Federal Register** notice (63 FR 66201), published a proposed Special Surveillance List. The notice provided an opportunity for all interested parties to submit their comments and objections in writing on the proposed Special Surveillance List until December 31, 1998. DEA received one comment regarding the proposal. The comment was a joint response from the Agricultural Retailers Association (ARA) and The Fertilizer Institute (TFI). Both organizations fully supported the DEA's implementation of the Methamphetamine Control Act of 1996 and specifically the publication of the "Special Surveillance List" of laboratory supplies used in methamphetamine production. The ARA/TFI, however, asked if its members would be subject to the \$250,000 civil penalty provisions of the MCA for thefts of anhydrous ammonia, a Special Surveillance List chemical, from portable tanks stored on their properties. In response to the ARA/TFI question, the civil penalty provision of the MCA applies to a "distribution" or "sale" of a laboratory supply by a business or firm to a customer for the unlawful production of controlled substances or listed chemicals. A theft by definition is not a distribution or a sale and thus individuals would not be subject to the civil penalty provisions of the MCA for thefts of a laboratory supply.

The MCA provides for a civil penalty of not more than \$250,000 for the distribution by a business of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with "reckless disregard" for the illegal uses to which such a laboratory supply would be put. 21 U.S.C. 842(a)(11), 842(c)(2)(C). Individuals who violate 21 U.S.C. 842(a)(11) are subject to a civil penalty of not more than \$25,000. 21 U.S.C. 842(c)(1)(A). For purposes of this provision, the term "distribution"

includes the exportation of a laboratory supply.

The MCA further states that, for purposes of 21 U.S.C. 842(a)(11), there is a "rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer."

The CSA contains other sections relating to the illegal manufacture of controlled substances. Section 841(d)(2) of Title 21 provides that any person who knowingly or intentionally distributes a listed chemical knowing, or having reasonable cause to believe, that it will be used in the illegal manufacture of a controlled substance, is subject to criminal prosecution. Section 843(a)(7) of Title 21 provides that any person who knowingly or intentionally distributes any chemical, product, equipment or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical, is subject to criminal prosecution.

In developing the Special Surveillance List, the DEA consulted with both DEA and State/Local law enforcement and forensic laboratory authorities. The DEA examined clandestine laboratory seizure reports for information regarding: (1) Illicit drug production methods; (2) chemicals actually used in clandestine production of controlled substances and listed chemicals; and (3) the role and importance of chemicals used in the syntheses. In addition, the DEA considered the legitimate uses and market for these chemicals.

The Special Surveillance List focuses on chemicals used in the domestic production of controlled substances and listed chemicals. Therefore the list includes those chemicals used not only in the production of methamphetamine, but also of other controlled substances such as PCP, LSD, methcathinone and amphetamine. The list does not focus on chemicals used in the production of heroin or cocaine since these drugs are seldom produced domestically. However, the Special Surveillance List includes all listed chemicals as specified in 21 CFR 1310.02 (a) or (b). The phrase "all listed chemicals" includes all chemical mixtures and all

over-the-counter (OTC) pharmaceutical products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls.

The following is the Special Surveillance List for laboratory supplies used in the manufacture of controlled substances and listed chemicals:

Special Surveillance List Published Pursuant to Title 21, United States Code, Section 842(a)(11)

Chemicals

All listed chemicals as specified in 21 CFR 1310.02 (a) or (b). This includes all chemical mixtures and all over-the-counter (OTC) products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls.

Ammonia Gas
Ammonium Formate
Bromobenzene
1,1-Carbonyldiimidazole
Cyclohexanone
1,1-Dichloro-1-fluoroethane (e.g. Freon 141B)
Diethylamine and its salts
2,5-Dimethoxyphenethylamine and its salts
Formamide
Formic Acid
Hypophosphorous Acid
Lithium Metal
Lithium Aluminum Hydride
Magnesium Metal (Turnings)
Mercuric Chloride
N-Methylformamide
Organomagnesium Halides (Grignard Reagents) (e.g. ethylmagnesium bromide and phenylmagnesium bromide)
Phenylethanamine and its salts
Phosphorus Pentachloride
Potassium Dichromate
Pyridine and its salts
Red Phosphorus
Sodium Dichromate
Sodium Metal
Thionyl Chloride
ortho-Toluidine
Trichloromonofluoromethane (e.g. Freon-11, Carrene-2)
Trichlorotrifluoroethane (e.g. Freon 113)

Equipment

Hydrogenators
Tableting Machines
Encapsulating Machines
22 Liter Heating Mantels

Individuals and firms which distribute listed chemicals and chemicals, products, materials, or equipment on the above list, are hereby officially notified that these materials may be used in the illicit production of certain controlled substances or listed chemicals.

The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to

the Administrator of the DEA pursuant to 28 CFR 0.100. The Administrator, in turn, has redelegated this authority to the Deputy Administrator pursuant to 28 CFR 0.104.

This surveillance list may be revised as appropriate. Notice of proposed changes will be published as they occur. While publication in the Federal Register satisfies the notification requirements for the Special Surveillance List, DEA is attempting to disseminate the list as widely as possible. Therefore, copies of the list will be sent to appropriate industry associations and trade journals, and to the extent practical, to individual manufacturers and distributors of "laboratory supplies." In addition, a current surveillance list will be available on the DEA homepage at <http://www.usdoj.gov/dea/>.

Small Business Impact and Regulatory Flexibility Concerns

The Special Surveillance List applies to all individuals and firms which distribute the listed chemicals and laboratory supplies (chemicals, products, materials, or equipment) on the list. The notice does not impose any record-keeping or reporting requirements for any of the laboratory supplies which are not listed chemicals. Thus the surveillance list will have a negligible impact on affected parties.

The notice serves two purposes. First, it informs individuals and firms of the potential use of the items on the list for the production of listed chemicals and illicit drugs. Second, it advises individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person anytime after the two week period following receipt of written notification by the Attorney General that the person has used, attempted to use, or distributed the laboratory supply further for the unlawful production of controlled substances or listed chemicals.

DEA chose to limit the number of chemicals, products, materials, and equipment on the Special Surveillance List to those most frequently used in the clandestine production of controlled substances or listed chemicals. Limiting the number of such items on the list minimizes the impact on wholesalers and retailers of the chemicals.

The Deputy Administrator hereby certifies that this notice has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This notice will provide an increased level of law enforcement control to prevent the diversion of laboratory supplies used for

the production of listed chemicals and controlled substances. It will not however impose any new regulatory burden on the public. This notice fulfills the requirement imposed by Section 205 of the Methamphetamine Control Act (MCA) of 1996 that the Attorney General shall publish a special surveillance list which contains chemicals, products, materials, or equipment used in the manufacture of listed chemicals and controlled substances. A copy of this notice has been provided to the Chief Counsel for Advocacy at the Small Business Administration.

This notice has been drafted and reviewed in accordance with Executive Order 12866. This notice has not been determined to be a significant action. Therefore, this notice has not been reviewed and approved by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This notice will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This notice is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This notice will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: May 3, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99-12037 Filed 5-12-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Privacy Act of 1974; New System of Records Notice; Iran Claims Program

AGENCY: Foreign Claims Settlement Commission; Justice.

ACTION: Notice of new system of records.

SUMMARY: The Foreign Claims Settlement Commission (FCSC) hereby publishes notice of the establishment of an additional records system to be effective as of June 22, 1999, and designated "FCSC-29, Iran, Claims of less than \$250,000 Against." These records originated as duplicates of records included within the system of records "State-54, U.S./IRAN Claims Records," established October 26, 1982 (47 FR 47510), and were used by the FCSC between 1990 and 1995 to determine the validity and amount of claims of U.S. nationals of less than \$250,000 each against the Islamic Republic of Iran that were covered by a lump-sum claims settlement agreement between the United States and Iran effective June 22, 1990. This system was renamed "Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes" on October 28, 1993 (58 FR 58032). As part of the review mandated by the President's Memorandum on Privacy and Personal Information in Federal Records of May 14, 1998, the FCSC has concluded that it should publish this system of records notice to more accurately reflect the existence and nature of the records in question as a separately identifiable system of records.

Any person interested in commenting on this system may do so by submitting comments in writing to the Administrative Office of the Foreign Claims Settlement Commission, 600 E Street, NW, Washington, DC 20579. Comments must be submitted on or before June 22, 1999. This records system will be added to the Commission's current Privacy Act Systems of Records.

EFFECTIVE DATE: The system of records designated "JUSTICE/FCSC-29, Iran, Claims of less than \$250,000 Against" shall be established and become effective on June 22, 1999, as published herein unless amended by notice published prior to that date. The existing systems of records continue in effect.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission,

600 E Street NW, Room 6002,
Washington, DC 20579, telephone (202)
616-6975, fax (202) 616-6993.

JUSTICE/FCSC-29

SYSTEM NAME:

Iran, Claims of less than \$250,000
Against.

SYSTEM LOCATION:

Washington National Records Center,
4205 Suitland Road, Washington, DC
20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States nationals, including private individuals, partnerships, corporations, and other legal entities, with claims against the Government of the Islamic Republic of Iran valued at less than \$250,000 each for nationalization, expropriation, or other taking of property by that government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and valuation of claim, including description of property; and other evidence establishing entitlement to compensation for claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Pub.L. 99-93, approved August 16, 1985, 99 Stat. 437 (50 U.S.C. 1701 note), and the U.S.-Iranian *Settlement Agreement in Claims of Less than \$250,000, Case No. 86 and Case No. B38, Award No. 483*, effective June 22, 1990.

Purpose: To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims before it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

Records were used for the purpose of determining the validity and amount of claims; issuance of decisions concerning eligibility to receive compensation under the statute and Agreement; notifications to claimants of rights to appeal; preparation of decisions for certification to the Secretary of Treasury for payment. Names and other information furnished by claimants was for verifying citizenship status with the Immigration and Naturalization Service. As required by the authorizing statute, the information contained in this system of records, other than the names of claimants and the text of the Commission's decisions on their claims,

is maintained as confidential information which is exempt from disclosure to the public.

Law Enforcement: In the event that a system of records maintained by the FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

- i. The FCSC, or any subdivision thereof, or
- ii. Any employee of the FCSC in his or her official capacity, or
- iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or
- iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (system "Justice-FCSC 1"). File folders retrieved from Records Center by claim number.

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records are maintained in accordance with 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301-3314 when such records are determined no longer useful.

SYSTEM MANAGERS AND ADDRESS:

Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW, Room 6002, Washington, DC 20579; telephone 202-616-6975, fax 202-616-6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

Judith H. Lock,

Administrative Officer.

[FR Doc. 99-12103 Filed 5-12-99; 8:45 am]

BILLING CODE 4410-BA-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 5, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219-5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), on or before June 14, 1999.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Report on Occupational Employment.

OMB Number: 1220-0042.

Affected Public: Business or other for profit; not-for-profit institutions; State and Local governments.

Number of Respondents: 336,841 (3 year average).

Estimated Time Per Respondent: 30 minutes to 4 hours per response.

Total Burden Hours: 251,252 total hours (3 year average).

Total Annualized capital/startup costs: \$0.

Total annual costs (operating/maintaining systems or purchasing services): \$0.

Description: The OES Survey is a Federal/State sample survey of employment and wages by occupation of non-farm establishments that is used to produce data on current occupational employment and wages. The survey is a component in the development of employment and training programs, and occupational information systems.

In response to comments on the Preclearance Consultation notice published in the Friday, January 29, 1999 **Federal Register**, Vol. 64, No. 19, BLS changed the proposal to survey all large establishments (i.e., those with 250 workers or more) in FY 2000 to phasing-in all such establishments in the sample over a 4-year period.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99-12091 Filed 5-12-99; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995

(PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following proposed extension collections: (1) Regulations, 29 CFR Part 801, Application of the Employee Polygraph Protection Act of 1988; (2) Certificate of Medical Necessity (CM-893); (3) Representative Payee Report (CM-623), Representative Payee Report (CM-623S), and Physician's/Medical Officer's Report (CM-787); (4) Housing Terms and Conditions (WH-521); and (5) FECA Medical Report Forms and Claim for Compensation (CA-16b, CA-17b, CA-20, CA-1090, CA-1303, CA-1305, CA-1306, CA-1314, CA-1316, CA-1331, A-1332, CA-1336, OWCP-5a, OWCP-5b, OWC-5c, and CA-7). A copy of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 14, 1999. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., N.W., Room S-3201, Washington, D.C. 20210, telephone (202) 693-0339 (this is not a toll-free number), fax (202) 693-1451.

SUPPLEMENTARY INFORMATION:

Regulations, 29 CFR Part 801, Application of the Employee Polygraph Protection Act of 1988

I. Background: The Employee Polygraph Protection Act of 1988 (EPPA) prohibits most private employers from using any lie detector tests whether for preemployment screening or during the course of employment. The law contains several limited exemptions which authorize polygraph tests under certain conditions. Section 5 of the Act requires the Secretary of Labor to promulgate such rules and regulations as may be necessary to carry out the Act and require the keeping of records necessary or appropriate for the administration of the Act.

II. Current Actions: The Department of Labor seeks an extension of approval of the recordkeeping and third party disclosure requirements of the regulations in order to insure that polygraph examinees receive the rights and protections mandated by the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: 29 CFR Part 801, Application of the Employee Polygraph Protection Act.

OMB Number: 1215-0170.

Agency Number: None.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 328,000.

Frequency: Recordkeeping; Reporting on occasion; Third party disclosure.

Total Responses: 328,000.

Time per Response: 1 minute to 1/2 hour.

Estimated Total Burden Hours: 82,406.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Certificate of Medical Necessity, CM-893

I. Background: 30 USC 932 of Public Law 803, as amended, stipulates that coal miners eligible for black lung benefits will be furnished medical treatment, including services and apparatus, for such period as the nature of the illness (pneumoconiosis) or process of recovery will require.

II. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to determine if the miner meets the specific impairment standards to qualify for durable medical equipment, home nursing care and/or pulmonary rehabilitation.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Certificate of Medical Necessity.

OMB Number: 1215-0113.

Agency Number: CM-893.

Affected Public: Businesses or other for-profit; Individuals or households.

Total Respondents: 9,000.

Frequency: On occasion.

Total Responses: 9,000.

Average Time per Response: 20 to 40 minutes.

Estimated Total Burden Hours: 3,600.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Representative Payee Report (CM-623), Representative Payee Report (CM-623S), Physician's/Medical Officer's Report (CM-787)

I. Background: Benefits due to a black lung beneficiary under the Federal Mine Safety and Health Act (30 USC 901) may be paid to a representative payee on behalf of the beneficiary when the beneficiary is unable to manage his/her benefits due to incapability, incompetence or minority. The CM-623 is sent to representative payees who are not relatives of the beneficiary. The CM-623S, which is a shortened version of the CM-623, is sent to representative payees who are relatives of, and live with, the beneficiary. In a small number of cases, it is necessary to determine the incapability or incompetence of a beneficiary to manage his/her monthly benefits. The CM-787 is a form used to

collect certain medical information from a physician regarding a beneficiary's competency.

II. Current Actions: The Department of Labor seeks extension of approval to collect this information in order to determine the beneficiary's capability to manage their monthly black lung benefits, and to ensure that benefits paid to a representative payee are used for the beneficiary's well-being.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Representative Payee Report, Physician/Medical Officer's Report.

OMB Number: 1215-0173.

Agency Number(s): CM-623, CM-623S, CM-787.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Form	Number of respondents	Frequency	Average time per response (minutes)	Burden hours
CM-623	2,275	Annually	90	3,413
CM-623S	600	Annually	10	100
CM-787	223	Once	15	56

Total Responses: 3,098.

Estimated Total Burden Hours: 3,569.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$1,035.

Housing Terms and Conditions (WH-521)

I. Background: Section 201(c) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that any farm labor contractor, agricultural employer, or agricultural association that provides housing to any migrant agricultural worker, post in a conspicuous place or present to such worker a statement of the terms and conditions, if any, of occupancy of such housing. Form WH-521 is an optional form which may be used to post or present to a migrant agricultural worker a listing of the terms and conditions for occupancy of housing.

II. Current Actions: The Department of Labor seeks extension of approval of this information collection in order to carry out its statutory responsibility to ensure that farm labor contractors, agricultural employers, and agricultural associations have disclosed to migrant workers the terms and conditions of

occupancy at each site where housing is provided by such employers.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Housing Terms and Conditions.

OMB Number: 1215-0146.

Agency Number: WH-521.

Affected Public: Farms; Individuals or households; Businesses or other for-profit.

Total Respondents: 1,300.

Frequency: On occasion; Third party disclosure.

Total Responses: 1,300.

Time per Response: 30 min.

Estimated Total Burden Hours: 650.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

FECA Medical Report Forms (CA-16b, CA-17b, CA-20, CA-1090, CA-1303, CA-1305, CA-1306, CA-1314, CA-1316, CA-1331, CA-1332, CA-1336, OWCP-5a, OWCP-5b, OWCP-5c), and Claim for Compensation (CA-7)

I. Background: The Federal Employees' Compensation Act (FECA) provides for the payment of benefits for wage loss and/or for permanent impairment to a scheduled member,

arising out of a work related injury or disease. Form CA-7, Claim for Compensation, requests information from the injured worker regarding pay rate, dependents, earnings, dual benefits, and third-party information. The medical report forms collect medical information necessary to determine entitlement to benefits.

II. Current Actions: The Department of Labor seeks an extension of approval for this information collection request in order to carry out its statutory responsibility to compensate injured employees under the provisions of the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Claim for Compensation, FECA Medical Reports.

OMB Number: 1215-0103.

Agency Number(s): CA-7, CA-16b, CA-17b, CA-20, CA-1090, CA-1303, CA-1305, CA-1306, CA-1314, CA-1316, CA-1331, CA-1332, CA-1336, OWCP-5a, OWCP-5b, OWCP-5c.

Affected Public: Individuals or households; Businesses or other for-profit; Federal government.

Frequency: As needed.

Form	Number of respondents	Average minutes per response	Burden hours
CA-7	400	13	87
CA-16b	130,000	5	10,833
CA-17b	60,000	5	5,000
CA-20	80,000	5	6,667
CA-1090	325	5	27
CA-1303	3,000	20	1,000
CA-1305	10	20	3
CA-1306	3	10	.5
CA-1314	125	20	42
CA-1316	15	10	2.5
CA-1331	250	5	21
CA-1332	500	30	250
CA-1336	1,000	5	83
OWCP-5a	7,000	15	1,750
OWCP-5b	5,000	15	1,250
OWCP-5c	15,000	15	3,750

Total Responses: 302,628.

Estimated Total Burden Hours: 30,766.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$109.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99-12089 Filed 5-12-99; 8:45 am]

BILLING CODE 4510-27-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10504, et al.]

Proposed Exemptions; Aetna Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written

comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Aetna Inc. (Aetna), Located In Hartford, Connecticut

Application No. D-10504

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).¹

I. Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and 406(b) of the Act and

¹ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the following transactions, if the conditions set forth in Section II and Section III, below, are satisfied:

(a) The receipt, directly or indirectly, by a sales agent (Sales Agent or Sales Agents), as defined in Section IV(l) below, of a sales commission from Aetna in connection with the purchase, with plan assets of an insurance contract (the Insurance Contract or Insurance Contracts), as defined in Section IV(h) below;

(b) The receipt of a sales commission by Aetna, as principal underwriter for a mutual fund registered under the Investment Company Act of 1940, in connection with the purchase, with plan assets, of securities issued by such mutual fund (the Aetna Fund or Aetna Funds), as defined in Section IV(c) below;

(c) The effecting by Aetna, as a principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by an Aetna Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract; and

(d) The purchase, with plan assets, of an Insurance Contract from Aetna.

II. General Conditions

(a) The transactions are effected by Aetna in the ordinary course of Aetna's business as an insurance company, or as a principal underwriter to an Aetna Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

(b) The transactions are on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be.

(c) The combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent: (1) for the provision of services to the plan, and (2) in connection with a purchase of an Insurance Contract or securities issued by an Aetna Fund, is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code. If such total is in excess of "reasonable compensation" the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and excise taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

III. Specific Conditions

(a) Aetna or the Sales Agent is not—

(1) A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan, or a trustee to an investment trust (the Investment Trust), as defined in Section IV(g) below, which will not purchase Insurance Contracts or securities issued by an Aetna Fund pursuant to this proposed exemption);

(2) A plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code);

(3) A fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the plan that are or could be invested in Insurance Contracts, securities issued by an Aetna Fund, or an Investment Trust; or

(4) An employer any of whose employees are covered by the plan.

(b)(1) Prior to the execution of a transaction involving the receipt of sales commissions by a Sales Agent in connection with the plan's purchase of an Insurance Contract, Aetna or the Sales Agent provides to an independent plan fiduciary (the Independent Plan Fiduciary), as defined in Section IV(f) below, disclosures of the following information concerning the Insurance Contract in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) An explanation of: (i) the nature of the affiliation or relationship between Aetna and the Sales Agent recommending the Insurance Contract; and, (ii) the nature of any limitations that such affiliation or relationship, or any agreement between the Sales Agent and Aetna places on the Sales Agent's ability to recommend Insurance Contracts;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by Aetna to the Sales Agent in connection with the purchase of the recommended Insurance Contract, together with a description of any factors that may affect the commission; and

(C) A full and detailed description of any charges, fees, discounts, penalties, or adjustments which may be paid by the plan under the recommended Insurance Contract in connection with the plan's purchase, holding, exchange, termination, or sale of the Insurance Contract, including a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan.

(2) Following receipt of the information required to be provided to

the Independent Plan Fiduciary, as described in Section III(b)(1) above, and before the execution of the transaction, the Independent Plan Fiduciary acknowledges in writing receipt of such information and approves the transaction on behalf of the plan. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be a Sales Agent involved in the transaction. The Independent Plan Fiduciary may not receive, directly or indirectly (e.g. through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Insurance Contracts, the written disclosure required under Section III(b)(1) need not be repeated, unless—

(A) More than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or

(B) The Insurance Contract being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described under Section III(b)(2) was obtained.

(c)(1) With respect to purchases with plan assets of securities issued by an Aetna Fund, or the receipt of sales commissions by Aetna in connection with such purchases, Aetna provides to an Independent Plan Fiduciary prior to the execution of the transaction the following information concerning the Aetna Fund in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) A description of: (i) the investment objectives and policies of the Aetna Fund, (ii) the principal investment strategies that the Aetna Fund may use to obtain its investment objectives, (iii) the principal risk factors associated with investing in the Aetna Fund, (iv) historical investment return information for the Aetna Fund, (v) fees and expenses of the Aetna Fund, including annual operating expenses (e.g., management fees, distribution fees, service fees, and other expenses) and fees paid by shareholders (e.g., sales charges and redemption fees), (vi) the identity of the Aetna Fund adviser, and (vii) the procedures for purchases of securities issued by the Aetna Fund (including any applicable minimum investment requirements and sales charges);

(B) A description of: (i) the expenses of the recommended Aetna Fund, including investment management,

investment advisory, or similar services, any fees for secondary services (e.g., for services other than investment management, investment advisory, or similar services, including but not limited to custodial, administrative, or other services), and (ii) any charges, fees, discounts, penalties, or adjustments that may be paid by the plan in connection with the purchase, holding, exchange, termination, or sale of shares of the recommended Aetna Fund securities, together with a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan or the Aetna Fund;

(C) An explanation of (i) the nature of the affiliation or relationship between Aetna and the Aetna Fund, and (ii) the limitation, if any, that such affiliation, relationship, or any agreement between Aetna and the Aetna Fund places on Aetna's ability to recommend securities issued by other investment companies;

(D) The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as a percentage of the dollar amount of the plan's gross payments and the amount actually invested, together with a description of any factors that may affect the commission; and

(E) A description of the procedure or procedures for redeeming the Aetna Fund securities.

The disclosures required under Section III(c)(1) above shall be deemed to be completed only if, with respect to fees and expenses of an Aetna Fund, the type of each fee or expense (e.g., management fees, administrative fees, fund operating expenses, and other fees, including but not limited to fees payable for marketing and distribution services pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the 12b-1 Fees)) and the rate or amount charged for a specified period (e.g., annually) is provided in a written document separate from the prospectus of such Aetna Fund.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(c)(1) above, and before execution of the transaction, the Independent Plan Fiduciary approves the specific transaction on behalf of the plan. Unless facts and circumstances would indicate the contrary, such approval may be presumed if the Independent Plan Fiduciary directs the transaction to proceed after Aetna has delivered the written disclosures to the Independent Plan Fiduciary. The Independent Plan Fiduciary may be an employer of employees covered by the

plan but may not be Aetna. The Independent Plan Fiduciary may not receive, directly or indirectly (e.g., through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Aetna Fund securities, Aetna: (A) provides reasonable advance notice of any material change with respect to the Aetna Fund securities being purchased or the commission with respect thereto, and (B) repeats the written disclosure required under Section III(c)(1) (A), (C), (D) and (E) once every three years.

(d)(1) Aetna shall retain or cause to be retained for a period of six (6) years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to Sections III (b), and (c);

(B) Any additional information or documents provided to the Independent Plan Fiduciary with respect to the transaction; and

(C) Written acknowledgments, as described in Section III(b)(2) above.

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of Aetna, such records are lost or destroyed before the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, such records shall be unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

IV. Definitions

For purposes of this exemption—

(a) *Aeltus* means the Aeltus Trust Company.

(b) *Aetna* means the Aetna Life Insurance Company, the Aetna Life Insurance and Annuity Company, and any of their affiliates, including but not limited to Aeltus;

(c) *Aetna Fund* means any investment company registered under the Investment Company Act of 1940 for which Aetna serves as investment adviser and as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(29)).

(d) *an affiliate* of a person means (1) any person directly or indirectly controlling, controlled by, or under common control with such person, (2) any officer, director, employee, or relative of any such person, or any partner in such person, and (3) any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner. For purposes of this definition, an "employee" includes (A) any registered representative of Aetna, where Aetna or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as Aetna's agent in connection with the sale of an Insurance Contract, whether or not such registered representative or insurance agent or broker or pension consultant is a common law employee of Aetna.

(e) The term, *control*, means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(f) *Independent Plan Fiduciary* means a fiduciary with respect to a plan, which fiduciary has no relationship to, or interest in, Aetna that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) *Investment Trust* means (1) any collective investment fund or group trust qualifying for tax-exempt status under the provisions of the Internal Revenue Code of 1986 and regulations and rulings thereunder, of which Aeltus, as defined in Section IV(a) above, or its successor or affiliate serves as trustee, or (2) any single-customer trust account for which Aeltus serves as trustee, provided that Aeltus has no discretionary authority or responsibility with respect to the management or administration of, and does not provide any investment advice with respect to, any plan assets not invested in such single-customer trust account or another Investment Trust.

(h) *Insurance Contract* or *Insurance Contracts* means an insurance or annuity contract issued by Aetna.²

² The Department expresses no opinion as to whether any so called "synthetic guaranteed insurance contracts" offered by Aetna constitutes an Insurance Contract within the meaning of this proposed exemption. The Department further notes that Prohibited Transaction Class Exemption 84-24, upon which this individual proposal is modeled, provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of insurance contracts to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this proposal for any act of self-dealing that

(i) A *nondiscretionary trustee* of a plan is a trustee whose powers and duties with respect to any assets of the plan are limited to: (1) the provision of nondiscretionary trust services, as defined in Section IV(j) below, to such plan, and (2) the duties imposed on the trustee by any provision or provisions of the Act or the Code.

(j) *Nondiscretionary trust services* means custodial services and services ancillary to custodial services, none of which services are discretionary.

(k) A *relative means a relative* as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or a sister;

(l) *Sales Agent* means any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with Aetna either through ownership or by contractual arrangement.

(m) *Principal underwriter* is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 8a-2(a)(29)).

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of August 28, 1997, the date of the filing of the application for exemption.

Summary of Facts and Representations

1. It is anticipated that the plans which participate in the transactions which are the subject of this proposed exemption are employee benefit plans subject to the Act, including defined benefit and defined contribution retirement plans (the Plan or Plans). Due to the nature of the requested exemption, the applicants, Aetna and its affiliates, maintain that they are unable to provide any of the following specific identifying information about the Plans that may engage in the proposed transactions: (A) the number of participants; (B) an estimate of the percentage of assets of each Plan affected by the requested exemption or transactions; or (C) the approximate aggregate fair market value of the total assets of each affected Plan. However, the applicants generally do not anticipate that Plans covered by the requested exemption will be participant-directed plans, pursuant to section 404(c) of the Act. In addition, the applicants have not requested an exemption, and no relief is provided, herein, for any plan covering employees of Aetna or its affiliates.

2. Aetna, is a publicly-traded Connecticut company with its principal

place of business in Hartford, Connecticut. Aetna indirectly owns all of the outstanding shares of Aetna Life Insurance and Annuity Company (ALIAC) and the Aetna Life Insurance Company (ALIC). ALIC and ALIAC are Connecticut stock life insurance companies licensed to transact life, accident, and health insurance business in all fifty states of the United States and the District of Columbia. ALIAC is also registered as an investment adviser and a broker-dealer with the Securities and Exchange Commission (SEC). As of December 31, 1996, the total consolidated assets of ALIC was approximately \$43.9 billion, and the total consolidated assets of ALIAC was approximately \$28.8 billion.

3. ALIC and ALIAC offer a variety of insurance and annuity products to Plans some of which may serve as funding vehicles for retirement plan benefits. It is represented that all such insurance contracts are reviewed and approved under the laws of one or more states. In addition to providing insurance products, ALIC and ALIAC offer other services to Plans, including actuarial, record-keeping, and other plan administration services.

4. It is represented that the Insurance Contracts which are the subject of this proposed exemption are sold by Sales Agents. Sales Agents include insurance agents, brokers, or pension consultants or any affiliate thereof that is affiliated with Aetna either through ownership or by contractual arrangement. In connection with sales of Insurance Contracts, Sales Agents may receive commissions or other compensation.

5. The Aetna Funds referred to in this proposed exemption include the Aetna Variable Funds, the Aetna Series Funds, and Portfolio Partners, Inc. It is represented that all such funds are open-end investment companies registered with the SEC under the Investment Company Act of 1940. Each such investment company offers a number of different investment portfolios with different investment objectives and guidelines. The Aetna Funds are offered to Plans directly and through variable annuity contracts issued in connection with ALIAC's separate accounts.

6. Aetna Investment Services, Inc. (AISI), Aetna Financial Services, Inc. (AFSI), Aeltus Capital, Inc. (Aeltus Capital), and Financial Network Investment Corporation (FNIC) are each registered broker-dealers with the SEC and are wholly-owned affiliates of ALIC and ALIAC. ALIC, ALIAC, AISI, AFSI, Aeltus Capital, and FNIC and their successors (the Aetna Companies) have

provided and will provide a variety of services to the Aetna Funds.

7. In this regard, as disclosed in the prospectus materials for each of the Aetna Funds, ALIAC is the investment adviser to all of the Aetna Funds. In addition, ALIAC provides other services (the Secondary Services) to Aetna Funds, including accounting, shareholder administration, sub-accounting, and other administrative services. Further ALIAC is the principal underwriter to the Aetna Variable Funds and Portfolio Partners, Inc., and AISI is the principal underwriter to the Aetna Series Funds. In this regard, it is represented that as principal underwriters, ALIAC and AISI distribute Aetna Fund shares on an agency basis.³ It is further represented that ALIAC may engage affiliated or unaffiliated sub-advisers to the Aetna Funds from time to time.

Under the terms of services agreements between ALIAC and an Aetna Fund, ALIAC may receive management fees and fees for Secondary Services. In addition, ALIAC or AISI may receive sales commissions and distribution fees, including for some classes of shares issued by certain Aetna Funds 12b-1 Fees.⁴ It is represented that the prospectus materials for each of the Aetna Funds disclose whether such fees are paid and the basis under which such fees are paid.

8. Aeltus is a wholly-owned subsidiary of Aeltus Investment Management, Inc., an affiliate of the Aetna Companies. Aeltus is a limited purpose trust company chartered in the state of Connecticut and subject to the regulation and control of the Connecticut Commissioner of Banking. Aeltus may from time to time serve as a nondiscretionary trustee to Plans.

As of August 1, 1997, Aeltus maintains one or more collective investment funds that qualify for tax-exempt status under the provisions of the Code which are offered to Plans.⁵ In

³ As it is represented that ALIAC and AISI distribute shares in Aetna Funds on an agency basis, and as generally an Aetna Fund would not be a party in interest to a Plan, the applicant maintains that a Plan's purchase of shares in an Aetna Fund, in and of itself, should not involve any prohibitions under section 406(a) of the Act.

⁴ The Department notes that the relief provided by this exemption does not preclude the receipt of 12b-1 Fees by Aetna or its affiliates to the extent that the payment of such 12b-1 Fees cannot be functionally distinguished from the payment of a sales commission in connection with the purchase, with plan assets, of securities issued by an Aetna Fund.

⁵ It is represented that no relief is requested or required for the investment by Plans in the Investment Trust. The applicants represent that in all cases, the decision to invest in the Investment

may arise in connection with the ongoing operation or administration of the insurance contract.

addition, Aeltus may maintain custody of, and provide investment management services for, a portion of the assets of a Plan in a single customer investment trust. As trustee to an Investment Trust (either a collective investment fund or a single-customer investment fund), Aeltus has discretionary authority to manage and invest the assets of the Plan invested in the Investment Trust.⁶ However, it is represented that Aeltus does not provide and will not provide investment advice (as described by section 3(21)(A)(ii) of the Act and the regulations thereunder) or otherwise have any discretionary authority, responsibility, or control with respect to any plan assets not invested in an Investment Trust, or in connection with the decision by a Plan to invest plan assets in an Investment Trust, in an Insurance Contract, or in shares of an Aetna Fund.

9. With respect to any Plan that participates in an Investment Trust, Aeltus will be a service provider and a fiduciary, pursuant to section 3(14)(A) and (B) of the Act. The Aetna Companies, as service providers to Plans, may also be parties in interest with respect to such Plans, pursuant to section 3(14)(B) of the Act. In addition, in some cases, one or more of the Aetna Companies could be deemed to be a party in interest with respect to a Plan by virtue of an ownership relationship of such Aetna Companies to Aeltus, pursuant to section 3(14)(G), (H), and (I) of the Act. Further, under circumstances where a Sales Agent could be deemed to provide investment advice, as described in section 3(21)(A)(ii) of the Act, to a Plan in connection with the purchase by such Plan of an Insurance Contract or the purchase of shares of an Aetna Fund, the Sales Agent may be deemed to be a fiduciary to such Plan, pursuant to section 3(14)(A) of the Act.

Trust and, thereby, to engage Aeltus to provide investment management services to the Plan would be made by an independent plan fiduciary. Further, the applicants maintain that where the Investment Trust is a collective investment fund (a Collective Trust), any potential violations of section 406(a) or (b) of the Act in connection with a plan's investment in such Collective Trust would be exempt provided that certain conditions are satisfied, pursuant to section 408(b)(8) of the Act. In this regard, the applicants represent that any investments in the Collective Trust by Plans will comply with the conditions of section 408(b)(8) of the Act. The Department expresses no opinion, herein, as to whether any of the relevant provisions of part 4, subpart B, of Title I have been violated, regarding investment by Plans in the Investment Trust, nor as to whether the conditions of section 408(b)(8) have been or will be satisfied.

⁶The Department notes that, pursuant to Section III(a)(1) of this proposed exemption, relief would not be available for the purchase by Aeltus for such Investment Trust of Insurance Contracts, as defined in Section IV(h) below; or of securities issued by an Aetna Fund.

Where one of the Aetna Companies is a party in interest to a Plan, then purchases by such Plan of Insurance Contracts or purchases by such Plan of shares of Aetna Funds may be prohibited under section 406(a) of the Act. In addition in the event that a Sales Agent is deemed to be providing investment advice (as described in section 3(21)(A)(ii) of the Act and the regulations thereunder) to a Plan in connection with such Plan's purchases of Insurance Contracts or purchases of shares of Aetna Funds, the receipt of commissions by such Sales Agents may be prohibited under section 406(b) of the Act.

10. The applicants request relief from these transactions because of the uncertainty of the applicability of Class Exemption 84-24 (PTCE 84-24) to the transactions. In this regard, PTCE 84-24 provides relief from the prohibitions of sections 406(a)(1)(A) through (D) and 406(b) of the Act, and from the taxes imposed by section 4975 of the Code for certain classes of transactions involving purchases by plans of insurance or annuity contracts and purchases by plans of securities issued by registered investment companies, and the receipt of sales commissions in connection therewith by an insurance agent, broker, pension consultant, or investment company principal underwriter. However, no relief is available under PTCE 84-24, if the insurance agent, broker, pension consultant, or the investment company principal underwriter or its affiliate is a plan trustee, other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan. Even though, Aeltus has represented, that it does not and will not provide investment advice or exercise or have any discretionary authority over whether a Plan purchases Insurance Contracts or shares of an Aetna Fund, the exemption provided under PTCE 84-24 may not be available for such purchases where the assets of such Plan are under management with Aeltus, as trustee of an Investment Trust.

Aeltus has represented that as of the date the application for exemption was filed with the Department, that the transactions that are the subject of this proposed exemption had not occurred. However, it is anticipated that Plans participating in the Investment Trust may begin to purchase Insurance Contracts or to purchase shares of Aetna Funds at any time. Because the applicant believes that PTCE 84-24 may not cover a transaction between a plan and a party in interest whose affiliate provides trustee services, other than

nondiscretionary trustee services to the Plan, Aetna has requested an exemption from section 406(a) and (b) of the Act with respect to the proposed transactions and the corresponding provisions of section 4975(c)(1) of the Code retroactively to August 28, 1997, the date of the filing of the application for exemption.

11. In support of their request for individual exemption, Aetna represents that the transactions are on terms which are at least as favorable to the Plan as those negotiated at arm's length with an unrelated party, and such transactions are effected by Aetna or a Sales Agent in the ordinary course of the respective business of such parties. With respect to the receipt of sales commissions by Aetna or a Sales Agent for the provision of services to a Plan, and in connection with a purchase of an Insurance Contract or securities issued by an Aetna Fund, the combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent will not be in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code.

12. The applicants maintain that the requested exemption is administratively feasible. In this regard, compliance with the terms of the exemption is monitored by an Independent Plan Fiduciary, so that the level of oversight required by the Department is minimal. In this regard, an Independent Plan Fiduciary of each Plan that participates in the Investment Trust will receive notice regarding this proposed exemption. Further, the Aetna Companies will maintain records necessary to verify compliance with the conditions of this exemption.

13. The applicants maintain that the proposed exemption is in the interest of the Plans which participate in the subject transactions, because Plans will be able to take advantage of the full range of insurance and investment products offered by the Aetna Companies. For example, an Independent Plan Fiduciary of a defined benefit plan investing some or all of the assets of such Plan in an Investment Trust will also be able to purchase annuities or other insurance products for the Plan from Aetna.

14. The applicants maintain that the proposed exemption is designed to protect the rights and interests of the participants and beneficiaries of the Plans. In this regard, Aetna is required to make certain disclosures in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or in

investment matters. Specifically, before a Plan purchases an Insurance Contract, the Independent Plan Fiduciary must receive and acknowledge the written disclosures, described in Section III(b) above and must approve the transaction on behalf of the Plan. Similarly, before a Plan purchases shares of an Aetna Fund, the Independent Plan Fiduciary must receive the disclosures, described in Section III(c) above. Approval with respect to a Plan's purchase of shares of an Aetna Fund will be presumed, unless facts and circumstances indicate the contrary, if the Independent Plan Fiduciary directs the transaction to proceed after receiving the written disclosures from Aetna. Further, prior to a purchase of shares of an Aetna Fund, Aetna must disclose in a written document separate from the prospectus information with respect to specific types of fees or expenses paid from the assets of an Aetna Fund, including information about the rate or amount of each fee or expense charged for a specified period.

If a Plan purchases additional Insurance Contracts, Aetna does not have to repeat the written disclosure required under Section III(b)(1), unless more than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or unless the Insurance Contract being recommended for purchase or the commission thereto is materially different from that for which the approval was obtained. With respect to additional purchases of Aetna Fund securities, Aetna has represented that it will provide reasonable advance notice of any material change to the Aetna Fund securities being purchased or the commission thereto, and will repeat the written disclosure required under Section III(c)(1)(A), (C), (D), and (E) at least once every three (3) years.

Where Aeltus is a trustee other than a nondiscretionary trustee to a Plan, solely because it serves as a trustee to an Investment Trust in which such Plan participates, the applicants maintain that the proposed transactions do not appear to involve the types of abuse that the Department intended to address by limiting the availability of PTCE 84-24 where a party in interest or its affiliate is a trustee to a plan. Specifically, notwithstanding the fact that Aeltus is trustee to an Investment Trust, Aeltus is not acting as a fiduciary with discretion over whether a Plan purchases Insurance Contracts or shares of Aetna Funds, nor is Aeltus in a position to improperly influence or control such decision made by the Independent Plan Fiduciaries.

15. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) Plans can take advantage of the full range of insurance and investment products offered by the Aetna Companies;

(b) The transactions are effected by Aetna or by a Sales Agent in the ordinary course of business;

(c) The transactions are on terms at least as favorable to the Plan as an arm's length transaction with an unrelated party would be;

(d) The combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent for the provision of services to a Plan, and in connection with the proposed transactions is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code;

(e) Neither Aetna nor the Sales Agent is a trustee of the Plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the Plan or a trustee to an Investment Trust which will not purchase Insurance Contracts or securities issued by an Aetna Fund); a plan administrator; a fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the Plan that are or could be invested in Insurance Contracts, securities issued by an Aetna Fund, or an Investment Trust; or an employer any of whose employees are covered by the Plan;

(f) With respect to the proposed transactions, Aetna provides the Independent Plan Fiduciary with certain disclosures in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters; and provides disclosure in a written document separate from the prospectus of information regarding specific types of fees or expenses paid from the assets of an Aetna Fund and the rate or amount of each fee or expense charged for a specified period;

(g) Following receipt of the required disclosures and prior to entering the transaction, the Independent Plan Fiduciary approves the transaction on behalf of the Plan; and

(h) Aetna shall retain or cause to be retained certain records for a period of six (6) years from the date of any transaction covered by this exemption.

Notice to Interested Persons

Because of the large number of potentially interested persons, the applicants maintain that it is not possible to provide a separate copy of the Notice of Proposed Exemption (the Notice) to each Plan eligible to engage in the transactions covered by the requested exemption. In this regard however, Aetna intends to provide in writing by first-class mail to the Independent Plan Fiduciary of each Plan that participates in an Investment Trust within fifteen (15) days of the date of publication of the Notice in the **Federal Register**, a copy of the Notice, as published in the **Federal Register**, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The notification will inform such interested persons of their right to comment and/or request a hearing within thirty (30) days of receipt of a copy of the Notice.

Apart from the notification described in the paragraph above, the applicants represent that the only practical form of providing notice to interested persons is by means of publication of the Notice in the **Federal Register**.

FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

UNOVA, Inc. (UNOVA), Located in Beverly Hills, California

(Application Nos. D-10663 and D-10664)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, as of December 17, 1998, to: (1) the acquisition by the UNOVA, Inc. Pension Plan and the Landis Tool Pension Plan (collectively, the Plans) of certain improved real property (the Property) from an unrelated party for a sales price of \$15,250,000 (the Purchase); and (2) the leasing of a portion of the Property (the Lease) by the Plans to UNOVA, a party in interest with respect to the Plans, provided that the following conditions are satisfied:

(a) The Plans paid an amount for the Property which was no more than the

fair market value of the Property at the time of the transaction;

(b) The interest in the Property owned by each Plan represented no more than 15% of the value of either Plan's total assets at the time of the Purchase;

(c) The Property, and the amount of space in the Property leased to UNOVA under the Lease (the Leased Space), represents no more than 15% of the value of either Plan's total assets throughout the duration of the Lease;

(d) The terms and conditions of the Lease are at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;

(e) The fair market rental value of the Leased Space has been, and every three years during the Lease will continue to be, determined by a qualified, independent appraiser;

(f) The amount of rent paid by UNOVA to the Plans for the Leased Space throughout the duration of the Lease will be no less than the greater of the initial rent paid by UNOVA or the current fair market rental value of the Leased Space as determined every three years by a qualified independent appraiser;

(g) The Plans' independent fiduciary has determined that the Purchase and Lease are appropriate for the Plans and in the best interests of the Plans' participants and beneficiaries; and

(h) The Plans' independent fiduciary will monitor the Lease, as well as the conditions of this proposed exemption (if granted), and will take whatever actions are necessary to safeguard the interests of the Plans throughout the duration of the Lease.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of December 17, 1998.

Summary of Facts and Representations

1. UNOVA is an industrial automation, automated data collection, and mobile computing company located in Beverly Hills, California. The Plans consist of the UNOVA, Inc. Pension Plan and the Landis Tool Pension Plan. The UNOVA, Inc. Pension Plan is a defined benefit plan which had 7,425 participants and approximately \$263,299,725 in total assets, as of September 30, 1998. The Landis Tool Pension Plan, which covers the employees of the Landis Tool and Gardner Machine divisions of UNOVA, is a defined benefit plan which had 1,328 participants and approximately \$61,067,477 in total assets, as of September 30, 1998.

2. The Property is located at 21900 Burbank Boulevard in Los Angeles, California. The Property consists of a

2.15 acre lot improved by a three-story multi-tenant office building having 89,203 square feet of rental space. The Plans purchased the Property from the Variable Annuity Life Insurance Company, a party unrelated to the Plans, for \$15,250,000 on December 17, 1998.

After the Purchase, a portion of the Property's \$15,250,000 total asset value (the Property's Value) was allocated to each of the Plans (the Allocation). The Allocation apportioned approximately 81% of the Property's Value, or approximately \$12,378,936, to the UNOVA, Inc. Pension Plan, and approximately 19% of the Property's Value, or approximately \$2,871,064, to the Landis Tool Pension Plan. The Allocation was made for the purpose of ensuring that the interest in the Property owned by each Plan represented the exact same percentage of each Plan's overall assets at the time of the Allocation. As a result, at the time the Allocation was made, the Property comprised approximately 4.7% of the Landis Tool Pension Plan's assets and approximately 4.7% of the UNOVA, Inc. Pension Plan's assets.

3. After the Purchase, the Plans leased a portion of the Property to UNOVA, effective as of December 17, 1998 (i.e. the Lease). The leased portion of the Property comprises the entire third floor of the Property or 32,314 square feet (i.e. the Leased Space). Thus, the Leased Space represents approximately 36.2% of the Property's total square feet of rental space.

According to the terms of the Lease, the base rent paid by UNOVA is \$17.32 per square foot annually. Under the Lease, UNOVA is required to reimburse the Plans for all of the expenses the Plans incur through UNOVA's leasing of the Property. The expenses to be paid to the Plans by UNOVA, as lessee, are \$7.88 per square foot annually, subject to future adjustments each year based on the Plans' actual annual expenses.⁷ As a result, the total amount of rental income that the Plans are entitled to receive from UNOVA in the first year of the Lease is \$814,312.80, or \$25.20 per square foot annually. The applicant states that this amount represents the fair market value for the Leased Space, in accordance with rents currently being charged for similar properties in the

local real estate market (see discussion in Paragraphs 7 and 8 below).

4. The Lease is for an initial term of ten years. The Lease requires the Plans to reimburse UNOVA \$20.00 per square foot for UNOVA's expenses relating to UNOVA's installation as a tenant (the Reimbursement).⁸ In this regard, the applicant represents that leases for properties similar to the Leased Space typically contain reimbursement provisions similar to the Reimbursement. The duration of the Lease may be extended upon written notice by UNOVA to the Plans at least three months prior to the expiration of the Lease's initial term or the Lease's three renewal terms (the Renewals). In each instance, the Renewal will be for an additional five years and will be subject to the approval of an independent qualified fiduciary (see Paragraphs 8, 9, and 10 below). As part of such approval, the independent fiduciary must determine that the Lease payments will equal the current fair market rental value of the Leased Space and that all of the other conditions of the Lease will remain in the best interest and protective of the Plans.

5. The applicant states that an independent qualified real estate appraiser will determine the fair market rental value of the Leased Space every three years. If the independent appraiser determines that the fair market value of the Leased Space is greater than the \$25.20 per square foot per year as specified in the Lease, UNOVA will be required to pay a new rental rate equal to the fair market rental value of the Leased Space. However, under no circumstances will a new rental rate be reduced below the initial rental rate. Thus, in accordance with this procedure, all rents paid by UNOVA will be no less than the greater of \$814,312.80 per year, as provided for in the Lease, or the fair market rental value of the Leased Space as determined every three years by the independent qualified appraiser.

Additionally, the amount of rent the Plans receive from UNOVA will periodically be adjusted (the Adjustments) to reflect increases in the

⁸The Department expresses no opinion in this proposed exemption as to whether the expenses incurred by the Plans relating to the tenant improvements made to the Leased Space on behalf of UNOVA would violate any provision of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of a plan. In addition, section 404(a) of the Act requires that plan fiduciaries act for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

⁷In the event that UNOVA incurs an actual annual expense in excess of \$7.88 per square foot, UNOVA will reimburse the Plans the full amount of the excess expense. After a year in which UNOVA incurs an excess expense, the following year's annual expense amount will be adjusted upward to reflect the actual amount paid in the previous year. This formula will be continued in subsequent years.

Consumer Price Index (CPI). The first Adjustment will occur after the Lease has been in effect for five years. At that time, the actual rental rate for the Leased Space will be increased by a percentage equal to 90% of the percentage increase in the CPI during that period. Thereafter, additional Adjustments, which will be calculated in the same manner as the first Adjustment, will occur at five year intervals upon any Renewal.

6. The Property has been appraised (the Appraisal) by Eric Stucky, MAI (the Appraiser), a certified appraiser for CB Richard Ellis, Inc. Appraisal Services, an independent real estate appraisal company located in Los Angeles, California. The Appraiser considered both the sales comparison approach and the income capitalization approach to value the Property. However, the Appraiser's conclusions were based on the income capitalization approach. The Appraiser concluded that the Property had a fair market value of \$15,600,000, as of August 13, 1998.

The Appraiser additionally analyzed the fair market rental rate of the Leased Space and the Reimbursement provision of the Lease. The Appraiser's analysis involved reviewing recent leases in the Property, analyzing rental rates of recently leased properties similar to the Leased Space, and interviewing market participants. After this analysis, the Appraiser concluded that the Leased Space's initial rental rate of \$25.20 per square foot annually represented the current fair market value of the Leased Space. The Appraiser additionally concluded that the Reimbursement was within the range of allowances for tenant reimbursement found in leases involving properties similar to the Leased Space.

7. The Appraisal was reviewed by Andrew Minstein and Phil Gottfried (the Reviewers), each a certified real estate appraiser for AGM and Associates (AGM), an independent appraisal company. The Reviewers represent that they have no financial interest in the Property. Upon their review of the Appraisal, the Reviewers concluded that the Appraiser's valuation of the Property was reasonable. In addition, the Reviewers represent that the rental rate to be paid by UNOVA for the Leased Space during the first year of the Lease is at the high end of the range of rents currently being paid for similar properties in the local real estate market.

8. UNOVA represents that Harvey A. Bookstein of Roth Bookstein & Zaslow, LLP (Roth Bookstein & Zaslow) located in Los Angeles, California, was appointed on August 21, 1998, to serve

as the Plans' independent fiduciary with respect to the Purchase and Lease. Mr. Bookstein has been a Certified Public Accountant for over 25 years. Mr. Bookstein states that he is experienced and knowledgeable in matters concerning real estate and qualified retirement plans.

Mr. Bookstein states further that he is unrelated to both the Plans and UNOVA. In this regard, Mr. Bookstein represents that throughout the duration of the Lease and any of the Renewals thereof, Roth Bookstein and Zaslow will receive less than one percent of its annual gross income from any of the parties involved in the proposed transaction. Mr. Bookstein has acknowledged his duties, liabilities and responsibilities as a fiduciary for the Plans for purposes of the subject transactions.

9. In order to ensure that the Purchase and Lease were in the best interest of the Plans, Mr. Bookstein:

(a) Reviewed the terms of the Purchase and Lease to determine whether the transactions would be at least as favorable to the Plans as those terms and conditions which would exist in similar transactions between unrelated parties;

(b) Confirmed that the Purchase and Lease conformed to the diversification and investment objectives of the Plans;

(c) Reviewed the terms of the Lease, including the provisions relating to the initial rental rate, the Reimbursement, the Renewals, and the Adjustments, to confirm that the terms and conditions of the Lease would be in the best interests of the Plans and their participants and beneficiaries;

(d) Compared the terms and conditions of the Lease, including the provisions relating to the initial rental rate, the Reimbursement, the Renewals, and the Adjustments, to the terms and conditions of arm's-length leases involving similar properties, to ensure that the overall investment return that the Plans will receive from the Lease will be comparable to the overall investment return for similar leases involving unrelated parties;

(e) Confirmed that the Lease reflected the current fair market rental rate for the Leased Space at the time of the transaction, as determined by an independent qualified appraiser; and

(f) Confirmed that the Purchase and Lease would be in the best interests of the Plans' participants and beneficiaries.

10. Mr. Bookstein represents that he completed an analysis of the Purchase and Lease (the Analysis) prior to the date in which the Plans and UNOVA entered into the transactions.

Mr. Bookstein states that after conducting the Analysis, he determined that such transactions were in the best interests of the Plans' participants and beneficiaries. In addition, Mr. Bookstein determined that the terms and conditions of the Lease would be at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party.

Mr. Bookstein additionally analyzed the overall investment portfolio of the Plans (the Investment Analysis) prior to the transactions. Upon completion of the Investment Analysis, Mr. Bookstein determined that the Purchase and Lease would be consistent with the Plans' investment objectives and policies.

Mr. Bookstein also prepared a net present value (NPV) analysis (the NPV Analysis) of the Lease.⁹ Mr. Bookstein represents that his analysis involved comparing the NPV of the Lease to the NPV of leases that pre-dated the Plan's purchase of the Property. Mr. Bookstein represents that this comparison included using a discount rate of 10 percent (which operates as the rate of return objective) and deducting from the income stream all expenses related to such leases and their proportionate share of the Property's expenses to the extent that these expenses exceeded those of their base year. Mr. Bookstein represents that the results of the NPV Analysis is consistent with his conclusion that the terms and conditions of the Lease are in the best interests of the Plan.¹⁰

Mr. Bookstein represents that he will monitor the Lease throughout its duration, as well as the conditions of this proposed exemption (if granted), and will take whatever action is necessary to protect the Plans' rights under the Lease and safeguard the interests of the Plans. Additionally, Mr. Bookstein represents that he will ensure that the Plans' rental income from the Lease, or upon any Renewal, reflects the Leased Space's fair market rental value at the time. Mr. Bookstein further represents that the Plans will not enter into any Renewals without his approval.

11. The Applicant represents that in the event of a termination of Mr.

⁹The NPV is the difference between the present value of all expected investment benefits (or positive cash flows), and the present value of capital outlays (or negative cash flows), over the entire period of the investment.

¹⁰In this regard, the Mr. Bookstein's conclusions with respect to the NPV Analysis depends on the fact that the current rental rate being charged to UNOVA represents the fair market value of the Leased Space, and that there will be appropriate readjustments to the rent to reflect any increases in the fair market rental value of the Leased Space at least once every three years by an independent appraiser.

Bookstein's appointment as independent fiduciary to the Plans with respect to the Lease, any successor to Mr. Bookstein will have responsibilities, independence and experience similar to those described in Paragraphs 8, 9, and 10 above. In this regard, the Applicant states that if it becomes necessary to appoint a successor independent fiduciary (the Successor) to replace Mr. Bookstein, a letter will be sent to the Department at least thirty (30) days prior to the appointment. The letter will specify that the Successor has responsibilities, experience and independence similar to those of Mr. Bookstein. If the Department does not object to the Successor, the new appointment will become effective on the 30th day after the Department receives such letter.

12. In summary, UNOVA represents that the subject transactions satisfy the statutory criteria contained in section 408(a) of the Act for the following reasons:

(a) The Plans paid an amount for the Property which was no more than the fair market value of the Property at the time of the Purchase;

(b) The interest in the Property owned by each Plan represented no more than 15% of the value of either Plan's total assets at the time of the Purchase;

(c) The Property and the Leased Space represented no more than 15% of the value of either Plan's total assets at the time of the transactions and will remain less than that percentage throughout the duration of the Lease;

(d) The terms and conditions of the Lease are, and will remain, at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;

(e) The fair market rental value of the Leased Space has been, and every three years during the Lease will continue to be, determined by a qualified, independent appraiser;

(f) The amount of rent paid by UNOVA to the Plans for the Leased Space throughout the duration of the Lease will be no less than the greater of the initial rent paid by UNOVA or the fair market rental value of the Leased Space as determined every three years by a qualified independent appraiser;

(g) Mr. Bookstein, as the Plans' independent fiduciary, has determined that the transactions are appropriate for the Plans and in the best interests of the Plans' participants and beneficiaries; and

(h) Mr. Bookstein, as the Plans' independent fiduciary, will monitor the Lease, as well as the conditions of this proposed exemption (if granted), and will take whatever actions are necessary

to safeguard the interests of the Plans under the Lease.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219-8883 (this is not a toll free number).

Daniel N. Cunningham IRA (the Cunningham IRA); Sidney B. Cox IRA (the Cox IRA) (collectively, the IRAs), Located in Fresno, California

[Exemption Application Numbers: D-10723 and D-10724]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase (the Purchase) by each IRA¹¹ of certain shares of Clovis Community Bank common stock (the Stock) from Mr. Daniel N. Cunningham and Mr. Sidney B. Cox (the Account Holders), disqualified persons with respect to the IRAs, provided that the following conditions are met:

(a) The Purchase of the Stock by each IRA is a one-time transaction for cash;

(b) Each IRA purchases the Stock for a price not exceeding the fair market value of the Stock at the time of each Purchase;

(c) The terms and conditions of each Purchase are at least as favorable as those available in an arm's length transaction with an unrelated third party;

(d) Each IRA does not pay any commissions or other expenses in connection with each Purchase;

(e) The IRA assets invested in the Stock do not exceed 25% of the total assets of each IRA at the time of the transaction; and

(f) Each IRA, at all times, will hold less than one percent (1%) of the outstanding shares of the Stock.

Effective Date: If this proposed exemption is granted, the exemption will be effective as of April X, 1999.

Summary of Facts and Representations

1. The applicants describe the Account Holders, their holdings of the Stock, and the IRAs as follows:

(a) Daniel N. Cunningham currently serves on the Board of Directors of

¹¹ Because each IRA has only one participant, there is no jurisdiction under 29 CFR § 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Clovis Community Bank (Clovis). As of December 31, 1998, he held 96,494 shares (48,851 directly and 47,643 indirectly) in his individual capacity. The Cunningham IRA is an individual retirement account, trusted by Wheat First Union, established under Code section 408(e). As of September 30, 1998, the IRA held assets valued at \$1,483,007.

(b) Sidney B. Cox currently serves on the Board of Directors at Clovis. As of December 22, 1998, he held 12,522 shares in his individual capacity. The Cox IRA is an individual retirement account, trusted by Smith Barney, established under Code section 408(e). As of September 30, 1998, the IRA held assets valued at \$195,819.37.

2. The Stock consists of shares issued by Clovis. Clovis is a California state-licensed bank with deposit accounts insured by the Federal Deposit Insurance Corporation (the FDIC). Clovis is subject to the regulation, supervision and periodic examination by the California Department of Financial Institutions and the FDIC. Clovis is not a member of the Federal Reserve system, but is nevertheless subject to certain regulations relating thereto.

3. The Stock is common stock with no par value and the only class authorized in the Clovis articles of incorporation. Currently, there are 1,069,067 shares outstanding. The Stock is not listed on any exchange, nor is it listed with NASDAQ. Trading of the Stock is limited in volume with transactions coordinated between buyers and sellers utilizing brokers. Bid and asked prices for the Stock are quoted weekly in "The Fresno Bee" and the National Daily Quotation Service's "pink sheets."¹²

4. The applicants request an exemption for the Purchase of the Stock by each individual IRA from its respective participant. Each Account Holder serves on the Board of Directors of Clovis¹³ and has, in the past, been granted options to purchase shares of the Stock. Each Account Holder has exercised such options and proposes selling these newly acquired shares to his respective IRA. Sidney Cox proposes selling to the Cox IRA the lesser of (1) 2,530 shares or (2) an amount not exceeding 25% of the total assets of the

¹² As of April 2, 1999, the Bid price was \$21½ and the Ask price was \$23.

¹³ The applicants state that Mr. Cunningham and Mr. Cox's appointments to the Board of Directors of Clovis and their continuing service thereon is not in any way related to the acquisition and holding of the Stock by their IRAs. In addition, the applicants represent that the purchase of the Stock by the IRAs will not enable Mr. Cunningham or Mr. Cox to achieve any personal financial objectives unrelated to the interests of the IRAs.

Cox IRA. Daniel Cunningham proposes selling 9,000 shares to the Cunningham IRA.

5. The applicants represent that each IRA will pay no commissions or other expenses in connection with the Purchase. The Purchase will involve a one-time transaction for cash. Each IRA will pay a share price based on the average of the highest current independent bid and lowest current independent offer as of the close of the business day preceding the proposed Purchase, on the basis of a reasonable inquiry from at least three broker-dealers or pricing services independent of Clovis. The applicants further represent that the Stock will not exceed 25% of the value of the assets of each IRA at the time of the proposed transaction. Finally, the applicants state that each IRA at all times will hold less than one percent (1%) of the outstanding number of Clovis shares.

6. The applicants represent that the proposed transactions are feasible in that each transaction will involve a one-time transaction for cash. Furthermore, the applicants state the proposed transactions will be in the best interests of each IRA in that the Purchases will enable each IRA to invest in a promising security at fair market value without incurring any commissions. Finally, the applicants represent that the transactions will be protective of the rights of each participant because, at the time of the transaction, the investment will not exceed 25% of the assets of each IRA.

7. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The Purchase of the Stock by each IRA will be a one-time transaction for cash; (b) Each IRA will purchase the Stock for a price not exceeding the fair market value of the Stock at the time of Purchase; (c) The terms and conditions of each Purchase will be at least as favorable as those available in an arm's length transaction with an unrelated third party; (d) Each IRA will not pay any commissions or other expenses in connection with each Purchase; (e) The IRA assets invested in the Stock will not exceed 25% of the total assets of each IRA at the time of the transaction; and (f) Each IRA, at all times, will hold less than one percent (1%) of the outstanding shares of the Stock.

NOTICE TO INTERESTED PERSONS: Because the applicants are the only participants in the IRAs, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and

requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219-8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new

exemption may be made to the Department.

Signed at Washington, DC, this 7th day of May, 1999.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

[FR Doc. 99-12101 Filed 5-12-99; 8:45 am]

BILLING CODE 4510-22-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Preservation.

DATES: June 8, 1999, from 9 a.m. to 4 p.m.

ADDRESSES: The National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740-6001, lecture rooms B and C.

FOR FURTHER INFORMATION CONTACT: Alan Calmes, 301-713-7403.

The agenda for the meeting will be Preserving the Zapruder Film: A Technical Discussion.

1. Current physical condition of the original as baseline
2. Storage and preservation of the original
3. Reproduction options

This meeting will be open to the public. However, seating may be limited.

Dated: May 7, 1999.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 99-12104 Filed 5-12-99; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Administration of Site Visit Activities

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to assist its Theater and

Musical Theater discipline in the administration and coordination of artistic and administration evaluations of grant applicants. These evaluations are prepared by consultants as the result of site visits, and serve to provide current information about theater and musical theater grant applicants. Responsibilities of the recipient of the Cooperative Agreement will include coordinating schedules and assignments, disbursing payments to consultants, maintaining records, and preparing and submitting administrative reports. Applicants for this Cooperative Agreement must be knowledgeable of the theater and musical theater fields and demonstrate planning and organizational skills and experience. Those interested in receiving the solicitation package should reference Program Solicitation PS 99-03 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 99-03 is scheduled for release approximately May 25, 1999 with proposals due on June 28, 1999.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506 (202/682-5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 99-12128 Filed 5-12-99; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Advisory panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel (ArtsREACH category) the National Council on the Arts will be held on June 15-18, 1999. The panel will meet from 9:00 a.m. to 5:30 p.m. on June 15, from 9:00 a.m. to 6:00 p.m. on June 16 and 17, and from 9:30 a.m. to 12:00 p.m. on June 18, in Room 708 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. A portion of this meeting,

from 9:00 a.m. to 12:00 p.m. on June 18, will be open to the public for a policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on June 15th and from 9:00 a.m. to 6:00 p.m. on January 16th and 17th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: May 6, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99-12081 Filed 5-12-99; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby

informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR 31, General Domestic Licenses for Byproduct Material.

3. How often the collection is required: Reports are submitted as events occur. Registration certificates may be submitted at any time. Changes to the information on the registration certificate are submitted as they occur.

4. Who will be required or asked to report: Persons receiving, possessing, using, or transferring byproduct material in certain items.

5. The number of annual respondents: Approximately 10,126 NRC general licensees and 20,252 Agreement State general licensees (total: 30,378).

6. The number of hours needed annually to complete the requirement or request: 2,634 hours for NRC licensees and 5,265 hours for Agreement State licensees (total: 7,899).

7. An indication of whether section 3507(d), Pub. L. 104-13 applies: Not applicable.

8. **Abstract:** 10 CFR part 31 establishes general licenses for the possession and use of byproduct material in certain items and a general license for ownership of byproduct material. General licensees are required to keep records and submit reports identified in part 31 in order for NRC to determine with reasonable assurance that devices are operated safely and without radiological hazard to users or the public.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (<http://www.nrc.gov>) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 14, 1999.

Erik Godwin, Office of Information and Regulatory Affairs (3150-0016), NEOB-10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395-3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Md., this 7th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99-12136 Filed 5-12-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Company, Turkey Point Units 3 and 4); Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR-31 and DPR-41, which authorize operation of Turkey Point Units 3 and 4 (the facility), respectively, at a steady-state reactor power level not in excess of 2300 megawatts thermal. The facility is a pressurized-water reactor located at the licensee's site in Dade County, Florida. The licenses require among other things that the facility comply with all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

In exemptions dated March 27, 1984, and August 12, 1987, concerning the requirements of Section III.G, Appendix R to 10 CFR part 50, the staff approved the use of 1-hour-rated fire barriers in lieu of 3-hour barriers in certain outdoor areas at Turkey Point Units 3 and 4. In addition, the staff found that, for certain outdoor areas not protected by automatic fire detection and suppression systems, separation of cables and equipment and associated non-safety-related circuits of redundant trains by a horizontal distance of 20 feet free of intervening combustibles provided an acceptable level of fire safety.

On the basis of the results of the industry's Thermo-Lag fire endurance testing program, the licensee concluded that the outdoor Thermo-Lag fire barrier designs cannot achieve a 1-hour fire-resistive rating but can achieve a 30-minute fire-resistive rating when exposed to a test fire that follows the American Society for Testing and Materials E-119 standard time-temperature curve. Because of these test results, the licensee in a letter dated June 15, 1994, requested an exemption to use 30-minute fire barriers for outdoor applications in lieu of the 1-hour fire barriers previously approved;

however, the exemption request was withdrawn by letter dated June 28, 1996.

In a letter dated December 12, 1996, the licensee requested an exemption from the requirements pertaining to the 3-hour fire barriers required by Section III.G.2.a, Appendix R to 10 CFR part 50, for the outdoor areas, excluding the turbine building area. The licensee requested that the NRC approve the use of 25-minute raceway fire barriers for these outdoor applications in lieu of the 1-hour fire barriers that were previously approved (refer to safety evaluations dated March 27, 1984, and August 12, 1987).

By letter dated February 24, 1998, the NRC staff denied the licensee's request for exemption for fire zone 106R, the control building roof, based on the uncertainty of the roof's combustibility and fire classification. During a site visit, on September 14, 1998, the licensee informed the NRC staff that it had obtained additional information to support that the control building roofing composite was an equivalent Class A construction per American National Standard/Underwriters Laboratories, Inc. No. 790, "Tests for Fire Resistance of Roof Covering Materials, Seventh Edition." Subsequently, by letters dated November 2, 1998, and February 11, 1999, the licensee submitted additional information for staff review regarding the classification of the fire zone 106R roof construction.

III

The underlying purpose of Section III.G.2.a, Appendix R to 10 CFR Part 50, is to provide reasonable assurance that at least one means of achieving and maintaining safe shutdown conditions will remain available during and after any postulated fire in the plant.

On the basis of the staff's supporting safety evaluation of the licensee's submittals, the staff concludes that the exemption from the requirements of Section III.G.2.a of Appendix R, for fire zone 106R as requested by the licensee, provides an adequate level of fire safety, and presents no undue risk to public health and safety. In addition, the staff concludes the underlying purpose of the rule is achieved.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. In addition, the Commission has determined that special circumstances are present in that

application of the regulation in the particular circumstances here is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants Florida Power and Light Company an exemption from the requirements of Section III.G.2.a of Appendix R to 10 CFR part 50, as requested in its above-referenced submittals, for fire zone 106R.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption for fire zone 106R will not have a significant effect on the quality of the human environment (64 FR 14276).

This exemption is effective upon issuance.

Dated at Rockville, Md., this 4th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99-12137 Filed 5-12-99; 8:45 am]

BILLING CODE 7590-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) *Collection title:* RUIA Claims Notification system.
- (2) *Form(s) submitted:* ID-4k.
- (3) *OMB Number:* 3220-0171.
- (4) *Expiration date of current OMB clearance:* 7/31/1999.
- (5) *Type of request:* Revision of a currently approved collection.
- (6) *Respondents:* Business or other for profit.
- (7) *Estimated annual number of respondents:* 669.
- (8) *Total annual responses:* 18,600.
- (9) *Total annual reporting hours:* 460.
- (10) *Collection description:* Section 5(b) of the RUIA requires that effective January 1, 1990, "when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claim".

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and the OMB reviewer, Laurie Schack 202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 99-12131 Filed 5-12-99; 8:45 am]

BILLING CODE 7905-01-M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 20, 1999, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

- (1) Continued Payment of Vested Dual Benefit Project
- (2) Occupational Disability (FCE Protocols)
- (3) SES Position for Planning, Procedures & Systems
- (4) Year 2000 Issues

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312-751-4920.

Dated: May 10, 1999.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99-12200 Filed 5-12-99; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41362; File No. 10-100]

Exempted Exchanges; AZX, Inc.; Order Amending Exemption Order Under Section 5 of the Securities Exchange Act of 1934; Final Order

May 3, 1999.

I. Introduction

AZX, Inc. has requested that the Securities and Exchange Commission ("Commission") amend the Exemption Order pursuant to which AZX, Inc.

operates the Arizona Stock Exchange ("AZX") without registration as a national securities exchange.¹ The amended Exemption Order would permit AZX to trade exchange-listed securities during regular trading hours, conduct two additional regular hours auctions, and consolidate its evening auctions. The proposal was published for comment in the **Federal Register** on February 1, 1999.² No comment letters were received. After evaluating the proposal, the Commission concludes that AZX will continue to meet the statutory standard for an exchange operating pursuant to the limited volume exemption from registration under Section 5 of the Securities Exchange Act of 1934 ("Act").³ Accordingly, the Commission hereby amends AZX's Exemption Order as requested by AZX, Inc., subject to the terms and conditions described below.

II. AZX

AZX, Inc. operates AZX, a computerized, single-price auction system that facilitates trading of registered equity securities by broker-dealers and institutions. AZX operates three off-hours auctions in Nasdaq National Market ("NNM") and exchange-listed securities, at 9:15 a.m., 4:20 p.m., and 5:00 p.m. (ET), each trading day. AZX also operates one auction during regular trading hours,⁴ at 10:30 a.m. (ET). As described in its Exemption Order, AZX trades only NNM securities during the 10:30 a.m. auction.

III. The Proposal

On July 30, 1998, AZX, Inc. filed with the Commission pursuant to Rule 6a-1 under the Act,⁵ an amendment to its application for exemption from registration as a national securities exchange. In its amendment, AZX proposes to operate two additional auctions during regular trading hours, at 12:30 p.m. and 2:30 p.m. (ET) each

trading day. AZX also proposes to trade exchange-listed and NNM securities during all three regular hours auctions. In addition, AZX proposes to consolidate its two evening after-hours actions into one after-hours auction ending at 4:30 p.m. (ET). Under the proposal, there would be five AZX auctions—two off-hours and three regulator hours. All five auctions would be permitted to trade both exchange-listed and NNM securities, and will be subject to real-time transaction reporting under National Association of Securities Dealers, Inc. ("NASD") rules.

IV. Discussion

A. Volume Level

The Commission believes that the changes proposed by AZX should not change AZX's status as an exempted exchange. The limited volume exemption continues to be premised on AZX's average daily volume (including both regular and after-hours auctions) remaining below the average daily volume of the lowest volume national securities exchange.⁶ AZX's current average daily volume is well below that of the lowest volume national securities exchange.⁷ Moreover, given the wide range of alternatives available to investors during regular trading hours, AZX's proposal to trade listed securities during its regular hours auctions (including two additional auctions) does not seem likely to result in AZX's volume exceeding the volume of any national securities exchange. Should AZX's volume exceed the limited volume threshold, however, the Commission may rescind the exemption.⁸

⁶ The Exemption Order states that the Commission would be concerned if the volume of an exempted exchange "exceeded that of any of the fully regulated national securities exchanges." Securities Exchange Act Release No. 28899, *supra* note 1 at 8380.

⁷ The Philadelphia Stock Exchange ("Phlx") is currently the lowest volume national securities exchange. For calendar year 1998, the average daily volume of the Phlx was approximately 6,262,127 shares. For calendar year 1998, the average daily volume of AZX was approximately 95,168 shares—less than 2% of the volume of the Phlx.

⁸ The Exemption Order states that "[s]hould the Commission learn that any of the conditions set forth in this Order or otherwise imposed upon the granting of this exemption have been breached * * * the Commission will commence a review to determine whether to rescind the exemption." Securities Exchange Act Release No. 28899, *supra* note 1 at 8383. In the event the Commission rescinds the exemption because AZX's volume exceeds the limited volume threshold, AZX would have the option to continue operating by registering as a national securities exchange, or registering as a broker-dealer and complying with Regulation ATS. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

¹ Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377 (February 28, 1991), amended by Securities Exchange Act Release No. 37272 (June 3, 1996), 61 FR 29145 (June 7, 1996) (collectively "Exemption Order"). AZX also operates without registering as a broker-dealer, clearing agency, transfer agent, or exclusive securities information processor pursuant to a staff no-action letter. Letter from Richard G. Ketchum, Director, Commission, to Daniel T. Brooks, Esq., Cadwalader, Wickersham & Taft, regarding Wunsch Auction Systems, Inc., dated February 28, 1991.

² Securities Exchange Act Release No. 40961 (January 22, 1999), 64 FR 4908.

³ 15 U.S.C. 78e.

⁴ "Regular trading hours" refers to the time period in which the New York Stock Exchange, Inc. permits trading, which is 9:30 a.m. to 4:00 p.m. (ET) each trading day.

⁵ 17 CFR 240.6a-1.

B. Other Conditions

All of the original and conditions of the Exemption Order remain in effect. In addition, this Order imposes an additional conditions—that AZX conduct surveillance of trading of listed securities during regular trading hours to detect, among other things, potential insider trading and market manipulation. As a condition of the original Exemption Order in 1991, AZX undertook to conduct surveillance of its after-hours trading. When it began trading NNM securities during regular trading hours in 1996, AZX implemented additional surveillance procedures tailored to regular hours trading in NNM stocks. AZX has now agreed to adapt those procedures to trading in listed securities. Specifically, AZX will compare AZX auction prices and bids and offers entered into AZX with trading activity on the registered exchanges, and will monitor the effects of an order cancellation or order revision on the price of the stock on the primary exchange.

V. Conclusion

The Commission has determined that AZX will continue to qualify for a limited volume exemption from exchange registration under the Act even if it implements the changes described in this order. Subject to the conditions described above, the Commission finds that, by reason of the limited volume of transactions effected on AZX, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require AZX's registration as a national securities exchange. The Commission reserves the right to apply further conditions or rescind the exemption if circumstances change or if AZX does not operate as represented.

It is therefore ordered that AZX's Exemption Order be amended to grant AZX's amended application for exemption from registration as a national securities exchange, subject to the terms and conditions described above.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-12061 Filed 5-12-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23828; 812-11548]

Bankers Trust Company, et al.; Notice of Application

May 7, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Extension of temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF THE APPLICATION:

Applicants have received an extension of a temporary order exempting them and other entities of which Bankers Trust Company ("BT") is or becomes an affiliated person from section 9(a) of the Act, with respect to a March 11, 1999 cooperation and plea agreement between BT and the U.S. Attorney for the Southern District of New York, until the Commission takes final action on an application for a permanent order or, if earlier, November 8, 1999. Applicants also have requested a permanent order.

APPLICANTS: BT, Investment Company Capital Corporation ("ICCC"), BT Funds Management (International) Limited ("FMIL"), and Alex. Brown Investment Management ("ABIM").

FLING DATES: The application was filed on March 25, 1999 and amended on April 28, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing or further extends the temporary exemption. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 1999 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.Y., Washington, D.C. 20549-0609. Applicants: BT, One Bankers Trust Plaza, 31st Floor, New York, NY 10006; ICCC, One South Street, Baltimore, MD 21202-3220; FMIL, The Chifley Tower, 2 Chifley Square, Sydney, NSW 2000, Australia; and ABIM, 217 E. Redwood Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION, CONTACT:

Rachel H. Graham, Senior Counsel at (202) 942-0583, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is an extension of a temporary order and a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. BT, a New York banking corporation, is the principal bank subsidiary of Bankers Trust Corporation ("BT Corp"), a New York corporation that, together with its affiliates and subsidiaries, performs a wide range of banking and financial services worldwide. BT, which is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser or subadviser to numerous investment companies registered under the Act ("funds").

2. ICCC, a Maryland corporation, and FMIL, an Australian corporation, are indirect wholly-owned subsidiaries of BT Corp. BT Corp indirectly owns approximately 50% of ABIM, a Maryland limited partnership. Accordingly, BT may be deemed to be under common control with ICCC, FMIL, and ABIM (each an "Affiliated Adviser" and, collectively, the "Affiliated Advisers"). Each Affiliated Adviser is registered under the Advisers Act and serves as investment adviser or subadviser to various funds.

3. BT acts as administrator, custodian, transfer agent, and shareholder servicing agent for certain funds advised by it or the Affiliated Advisers. BT also acts as custodian for certain other funds. ICCC acts as transfer agent for funds advised by it or other Affiliated Advisers. BT and ICCC are registered as transfer agents under the Securities Exchange Act of 1934.

4. On March 11, 1999, the U.S. Attorney for the Southern District of New York filed a three-count felony information ("Information") in the United States District Court for the Southern District of New York ("Court") alleging violations of 18 U.S.C. section 1005. The Information charges BT with making false entries on its books and records as a result of the conduct of certain employees in BT's processing services businesses in 1994-1996. The conduct involved the transfer to reserve accounts and to income of aged credit

items that should have been paid to customers, other third parties, or state abandoned property authorities.

5. On March 11, 1999, BT pleaded guilty to the charges in the Information pursuant to a written cooperation and plea agreement ("Cooperation and Plea Agreement"). As part of the Cooperation and Plea Agreement, BT agreed to pay a \$60 million fine and to place that amount in escrow pending sentencing.¹ The Cooperation and Plea Agreement provides that sentencing will be adjourned to on or before May 12, 1999.²

Applicants' Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits a person and any company of which the person is an affiliated person from serving or acting as an investment adviser, principal underwriter, or depositor for any registered investment company if the person has been convicted of any felony arising out of the person's conduct as, among other things, an underwriter, broker, dealer, investment adviser, or transfer agent. Applicants do not concede that the Cooperation and Plea Agreement would disqualify BT, the Affiliated Advisers, and all other entities of which BT is or becomes an affiliated person (together with Applicants, the "Covered Entities") under section 9(a) of the Act. In order to resolve any uncertainty, however, Applicants seek a permanent order exempting them and all other Covered Entities from section 9(a) of the Act with respect to the Cooperation and Plea Agreement.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, so applied to the applicant, are unduly or disproportionately severe or that the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the application.

3. On March 12, 1999, the Covered Entities received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Cooperation and Plea Agreement ("Temporary Order") (Investment Company Act Release No. 23737). The Temporary Order stated that it would expire when the

Commission took final action on an application for a permanent order or, if earlier, May 11, 1999.

4. As noted above, Applicants seek a permanent order exempting the Covered Entities from section 9(a) with respect to the Cooperation and Plea Agreement.³ Applicants also seek an extension of the Temporary Order if the requested permanent order is not granted before the Temporary Order expires.

5. Applicants assert that the prohibitions of section 9(a) as applied to the Covered Entities would be unduly and disproportionately severe. Applicants contend that, if the requested exemption is not granted, the section 9(a) prohibition would have a devastating impact on their investment advisory businesses. Applicants assert that those businesses were not involved in the matters underlying the Cooperation and Plea Agreement.⁴

6. Applicants believe that their inability to provide investment advisory services could impair significantly the financial interests of the funds they advise or subadvise and of the funds' shareholders. Applicants state that they have distributed or will distribute, to the boards of directors of the funds they advise and to the advisers of the funds they subadvise, written materials regarding the Cooperation and Plea Agreement and the reasons applicants believe relief from section 9(a) is appropriate. Applicants also state that they have offered, or will offer, to meet in person with the boards and advisers to discuss those materials. Further, Applicants will undertake to provide the funds with all information concerning the Cooperation and Plea Agreement and this application necessary for the funds to fulfill their disclosure and other obligations under the federal securities laws.

7. Applicants assert that their conduct has been such as not to make it against the public interest or the protection of investors to grant this application. Applicants contend that the Cooperation and Plea Agreement relates to books and records violations involving payments by BT in performing various processing services. Applicants state that BT has not been able to identify any fund client of its

custody services or any fund shareholder affected by its transfer agent services who has been affected by the matters giving rise to the Cooperation and Plea Agreement. Applicants also state that, although BT has been unable to identify all persons to whom it improperly failed to make payments, none of the identified persons are funds. Applicants acknowledge that approximately \$78,000 in aged credits from BT's unit investment trust business that likely should have been escheated to one or more states was improperly transferred to BT's reserve accounts. Applicants state, however, that none of the other payments by BT as paying agent were on behalf of fund issuers.

8. Applicants state that the persons identified as having been responsible for the matters underlying the Cooperation and Plea Agreement ("Identified Former Employees") no longer are employed by BT or any other Covered Entity. Applicants also state that, since 1996, BT has taken steps to prevent future violations of applicable laws and regulations relating to its handling of payments in its capacity as custodian, paying agent, benefit plan agent and similar roles. In particular, Applicants note that a new senior management team has assumed responsibility for the business out of which the Cooperation and Plea Agreement arose; BT has implemented a formal "Abandoned Property and Escheatment Policy" and appointed an Abandoned Property Officer; BT has hired better qualified personnel to replace the Identified Former Employees; and BT has engaged in an extensive effort to redistribute the improperly transferred moneys to their rightful owners (or, if applicable, to the proper abandoned property authority).

Applicants' Conditions

Applicants agree that any order issued on this application will be subject to the following conditions:

1. The application and any exemption issued shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any commission investigations or enforcement actions pursuant to the federal securities laws, or the consideration by the Commission of any application for exemption from statutory requirements including, without limitation, the revocation, removal, or further extension of any temporary exemption granted under the Act in connection with the application.

2. Neither applicants nor any of the other Covered Persons will employ any of the Identified Former Employees, or any persons who subsequently are identified as having been responsible for

¹ As a result of the matters underlying the Cooperation and Plea Agreement, BT also has agreed to pay a \$3.5 million fine to the State of New York.

² Applicants have informed the staff of the Commission that the Court has rescheduled the sentencing to June 21, 1999.

³ Applicants currently are the only Covered Entities that intend to rely upon the requested relief. Applicants note that, upon consummation of the pending merger between BT Corp and Deutsche Bank AG, Covered Entities would also include entities of which, as a result of the merger, BT becomes an affiliated person.

⁴ Applicants acknowledge that, in 1976, Alex. Brown & Sons, Inc. applied for and received an exemption from section 9(a). *Alex. Brown & Sons, Investment Company Act Rel. Nos. 9246* (Apr. 13, 1976) (notice) and 9377 (July 29, 1976) (order).

the matters underlying the Cooperation and Plea Agreement, in any capacity without first making further application to the Commission pursuant to section 9(c).

Extension of Temporary Order

The Commission has determined that it requires additional time to consider the issuance of a permanent order under section 9(c) of the Act. Accordingly,

It is ordered, under section 9(c) of the Act, that the temporary conditional order is extended until the date on which the Commission takes final action on the application for a permanent order exempting applicants and all other Covered Entities from section 9(a) of the Act or, if earlier, November 8, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-12060 Filed 5-12-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41370; File No. SR-Amex-99-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange LLC, Decreasing Options Transaction Fees

May 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 30, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 22, 1999, the Exchange filed Amendment No. 1³ with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce options transaction fees. The text of the proposed rule change is available at the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

The Amex currently imposes a transaction charge on options trades executed on the Exchange. These charges vary depending on whether the transaction involves an equity or index option, and whether the transaction is executed for a specialist or market maker account, a member firm's proprietary account, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depend upon the type of account for which the trade is executed. In addition, all three types of charges (transaction, options clearance, and options floor brokerage) are subject to caps on the number of options contracts subject to the charges on a given day.⁴

Currently, a transaction fee in an amount equal to either \$.15, \$.20, \$.30, or \$.40 per contract side is assessed for each customer option transaction, depending on the size of the premium involved (greater than or equal to \$1, or less than \$1) and the type of option (equity or index).⁵ For example, a charge is incurred in an amount equal to \$.30 for equity and \$.40 for index option customer transactions (per contract side) when the premium is

greater than or equal to \$1. When the premium is less than \$1, the transaction charge incurred is equal to \$.15 for equity and \$.20 for index option transactions (per contract side). These customer transaction charges also apply to both Long Term Equity Anticipation Securities ("LEAPS")⁶ and FLEX⁷ options.

Under the revised fee schedule, these transaction charges will be determined by the number of contracts in the order. As a result, for customer market and marketable limit orders of 30 or fewer contracts, no transaction charge will apply. For customer limit orders for 30 or fewer contracts, a charge of \$.10 per contract side will be assessed for both equity and index options. For all customer orders in excess of 30 contracts, a transaction charge equal to \$.10 per contract side will be assessed.

The Exchange believes this reduction in transaction charges will result in an overall 50% reduction of customer transaction charges during 1999. The Exchange believes that this will provide an actual cost savings to customers of approximately \$15-16 million (based on 1998 option contract volume) or approximately \$12-13 million (based on 1999 budget option contract volume). The Exchange also believes that the reductions are necessary to make the Exchange's options transaction charges more competitive with other options exchanges' fees and with the cost of trading other financial instruments, and to increase the number of options orders that are routed to the Exchange. While the Exchange anticipates that other options exchanges may also cut costs to customers, it believes that the proposed reductions will increase options usage among all investors and stimulate industry-wide growth in the options business.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

⁶ LEAPS are long-term index option series that expire from 12 to 36 months from their date of issuance. See Amex Rule 903C.

⁷ FLEX options are customized options with individually specified terms such as strike price, expiration date and exercise style. See Amex Rules 900G-909G.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Nasdaq-Amex, to Richard Strasser, Assistant Director, Division of Market Regulations, SEC, dated April 21, 1999. In Amendment No. 1, the Exchange corrected the statutory basis of the original filing to refer to Section 6(b)(4) of the Act.

⁴ The current caps are set at 2000 contracts for customer trades, and 3000 contracts for member firm proprietary, specialist, and market maker traders.

⁵ See Securities Exchange Act Release No. 38859 (July 22, 1997), 62 FR 40561 (July 29, 1997) (File No. SR-Amex-97-22).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other change imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-99-12, and should be submitted by June 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-12062 Filed 5-12-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41368; File No. SR-CBOE-98-50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Trading of Differential Index Options

May 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 21, 1998, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange filed Amendment No. 1³ to the proposed rule change on April 27, 1999. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade Differential Index Options, a new type of standardized index option whose value at expiration is based on the relative performance of either a designated index versus a benchmark index, a designated stock versus a benchmark index, or a designated stock versus a benchmark stock. The text of the proposed rule change is available at the Office of the Secretary, the CBOE and at the Commission.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19B-4.

³ See Letter to Michael A. Walinskas, Division of Market Regulation, Commission, from Timothy Thompson, CBOE, dated April 26, 1999 ("Amendment No. 1"). Amendment No. 1 makes certain technical changes to the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to trade a new type of standardized index option, the Differential Index Option, which will offer new investment and hedging opportunities. Differential Index Options will have a value at expiration based on an index, called the "differential index," of the relative performance of a designated index versus a benchmark index over a specific time period ("Index Differential Option"); of a designated stock versus a benchmark index over a specific time period ("Equity Differential Option"); or of a designated stock versus a benchmark stock over a specific time period ("Paired Stock Differential Option"). If the percent gain in the level of the designated index or stock during the period is greater than the percent gain in the underlying benchmark index or stock, then a Differential Call Option originally struck at the money will have a positive value at expiration and a Differential Put Option originally struck at the money will expire worthless. If the percentage gain in the level of the designated index or stock during the period is less than the percent gain in the underlying benchmark, then a Differential Put Option originally struck at the money will have a positive value at expiration and a Differential Call Option originally struck at the money will expire worthless. Thus, a Differential Index Option affords an investor the opportunity, through a single investment, to participate in the relative outperformance of a designated index or stock versus a benchmark index or stock (a Differential Call Option) or the relative underperformance of a designated index or stock versus a benchmark index or stock (a Differential Put Option) over the life of the option, regardless of the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

absolute performance of the designated index or stock.

For example, an investor may feel that software companies will outperform the broader market over the next several months, but is unsure whether the overall market will move higher or lower. If the investor were to buy an at-the-money standardized CBOE Computer Software Index ("CWX") call option and the Index declined, the option would expire worthless even if the Index declined by a much smaller percentage than the overall market. On the other hand, if the investor were to purchase an at-the-money Index Differential Call Option on the relative performance of the CBOE Computer Software Index versus the Standard & Poor's 100 Stock Index ("S&P 100"), a benchmark measure of large capitalization stock market performance, and CWX declined by a smaller percentage than the S&P 100, the Index Differential Call Option would have a positive value at expiration. Conversely, an investor who believes that CWX will underperform the S&P 100 may purchase at-the-money Index Differential Put Options perhaps to hedge a portfolio of software company stocks against such market underperformance. If CWX underperforms the S&P 100, the Index Differential Put Options will have a positive value at expiration, regardless of whether the CWX index level itself has increased or decreased on an absolute basis. In effect, the Differential Option structure removes the overall market risk component from the CBOE Computer Software Index performance.

Differential Calculation. The underlying security for a Differential Index Option is an index (called the "differential index") of the performance of the designated stock or index relative to the benchmark stock or index. The differential index is calculated as follows: on the base date of each year, prior to the listing of a Differential Index Option series, base reference prices are established for the designated index or stock and the benchmark index or stock (typically, the closing levels on a designated business day). Thereafter, percent changes from the base values of both the designated index or stock and the benchmark index or stock are continuously calculated and the percent change in the benchmark is subtracted from the percent change in the designated index or stock, providing a positive number if the designated index or stock has either out-gained or suffered a lesser percentage decline than the benchmark, and a negative number if the benchmark has out-gained the

designated index or stock or suffered a lesser percent loss.

The percentage differential in the relative gain or loss is then multiplied by 100 and added to a fixed base index value (typically 100) to yield the differential index which will underlie the Differential Index Options:

$$D_t = ((I_t/I_o) - (B_t/B_o)) \times 100 + F$$

Where:

D = differential index;

I = designated index or security;

B = benchmark index or security;

t = current or settlement value of index or security;

o = base reference value of index or security;

F = a fixed base index value, typically 100.

Thus, if the designated index or security has outperformed the benchmark by 7%, and the fixed value, F, is set at 100, the differential index value will be 107; if it has underperformed by 7%, the differential index value would be 93. The base reference values will remain in effect for a predetermined, fixed period (expected to be between six months and two years). Similar to other index values published by the Exchange, the value of each differential index will be calculated continuously and disseminated every 15 seconds⁴ under separate symbol by the Option Price Reporting Authority.

Adjustments. For Differential Index Options whose benchmark and designated securities are both indexes, adjustments will be made to the Differential Index Options whenever significant action has been taken by the publisher of the index. Such actions may include the splitting of the value of the designated or benchmark index or a change in the method of calculation. For example, if the publisher of an index were to split the index two-for-one, the Exchange would halve the base reference value of the index in the differential calculation. If an index ceases to be published, the Exchange (1) may replace it with a substitute index (i.e., one that correlates highly with the index being replaced) or a successor index (i.e., an index intended by the publisher as a replacement to the original index); or (2) may undertake to publish the index using the same procedures last used to calculate the index prior to its discontinuance.

The stock component of an Equity Differential and a Paired Stock Differential will be adjusted as follows:

(1) for a stock dividend, stock distribution, or stock split, whereby a number of shares (whether a whole number or other than a whole number) of the security are issued with respect to each outstanding share, the base price will be adjusted by the split factor in the Differential Index calculation; (2) for a reverse stock split or combination of shares whereby a number of shares (whether a whole number or other than a whole number) of the security are replaced by or combined into a single share, the base price will be adjusted by the split factor in the Differential Index calculation; (3) generally, there will be no adjustments to reflect ordinary cash dividends or distributions, or ordinary stock dividends or distributions made by the issuer of the benchmark or designated stock (The terms "ordinary cash dividends or distributions" shall have the meanings as set forth in Article VI, Section 11 of the By-Laws of The Options Clearing Corporation.); (4) when a security is converted into a right to receive a fixed amount of cash, such as in a merger, the Exchange will replace that security with the cash value and may accelerate the expiration and settlement of the European-style Differential Index option of which the security was a part or allow the option to continue to trade until its original expiration using the cash value as the current security price in the Differential Index calculation; and (5) in the case of a corporate reorganization, re-incorporation or similar occurrence by the issuer of a security which results in an automatic share-for-share exchange of shares of the issuer for shares in the resulting company, the Exchange will substitute the new security for the original security in the Differential Index calculation in the appropriate ratio.

In addition, contract adjustment will be made to differential Indexes to limit the likelihood of negative index values. In the event that the level of a Differential Index settles below 20, the contract will be adjusted by: (1) Adding 100 to the Differential Index level, and (2) adding 100 to the exercise price of the options.

Designated Indexes, Designated Stocks, Benchmark Indexes and Benchmark Stocks. Only stocks which meet the current Exchange Rules for listing standardize equity options will be eligible designated stocks in Equity Differential Options. Only stocks which meet the current Exchange Rules for listing standardized equity options will be eligible designated stocks or benchmark stocks in Paired Stock Differential Options. In this way, only

⁴ Telephone call between Sonia Patton, Attorney, Division of Market Regulation, Commission, and William Speth, Research and Planning, CBOE, on April 23, 1999.

the most liquid, actively traded stocks will be considered.

Similarly, only indexes that meet the current Exchange Rules for listing index options or that have been approved for options or warrant trading by the Commission will be eligible for designation either as designated indexes or benchmark indexes in Equity and Index Differential Options. In this way, only those indexes already deemed by the Commission to be suitable for options trading will be considered.

Expiration and Settlement. The proposed Differential Index Options will be European style (*i.e.*, exercises permitted at expiration only), and cash settled. Index Differential Options in which both the designated or benchmark indexes are broad-based will trade between the hours of 8:30 a.m. and 3:15 p.m. Central time. All other Differential Index Options will trade between 8:30 a.m. and 3:02 p.m. Central time. Differential Index Options will expire on the Sunday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an expiring options series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

While the Exchange seeks approval to list series of Differential Index Options as set forth in Rule 28.4(a)(i), (ii), (iii) and (iv), it is anticipated that the Exchange will initially list only five series with expirations corresponding to the four calendar months in the March cycle in the current calendar year, and a fifth series expiring in March of the following calendar year.

The exercise settlement value for Index Differential Options will be calculated based on the respective exercise settlement values for standardized options on each of the designated and benchmark indexes expiring on the same day. The exercise settlement value for Equity Differential Options will be calculated based on (i) the primary exchange regular-way opening sale price of the designated stock, or, in the case of a stock traded through the NASDAQ system, the first reported regular way sale that occurs when the markets are unlocked and uncrossed, provided that such sale price is within the current best bid or offer, and (ii) the exercise settlement value for standardized options on the benchmark index expiring on the same day. The exercise settlement value for Paired Stock Differential Options will be calculated based on the primary exchange regular way opening sale

prices of the designated and benchmark stocks, or, in the case of a stock trade through the NASDAQ system, the first reported regular way sale that occurs when the markets are unlocked and uncrossed, provided that such sale price is within the current best bid or offer. To ensure that the settlement price used satisfies these factors, the Exchange reserves the right to exclude a price from the settlement calculation for a Differential Index Option if it believes, in its best judgment, that such price is not indicative of the true price at that time.

Applicable Exchange Rules. CBOE Rules 28.1 through 28.12 will apply to the trading of Differential Index Option contracts. These Rules cover issues such as exercise prices and positions limits. Surveillance procedures currently used to monitor trading in each of the Exchange's options will also be used to monitor trading in Differential Index Options. In addition, Differential Index Options will be subject to the Exchange's sales practice and suitability rules applicable to standardized options.

Differential Index Options are "securities" under Section 3(a)(10) of the Act, and therefore are exempt pursuant to Section 28(a) of the Act from any state law that prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of "bucket shops" or other similar or related activities. Differential Index Options will be traded pursuant to the Exchange's rules and rule amendments discussed herein, which are subject to prior approval by the Commission.

Position Limits. The Exchange proposes that the position limits for Index Differential Options be set at the lower of the separate position limits for standardized index options trading on the designated index and the benchmark index. In the event that one or both of the indexes is not currently the subject of standardized index options trading, then the Exchange will establish position limits as the lesser of those that would be in effect for standardized options on the indexes if such options were trading. In the event neither the designated index nor the benchmark index is subject to position limits the Index Differential Options shall not be subject to position limits. The Index Differential Options shall be subject to any reporting requirements applicable to the underlying indexes.

For Equity Differential Options, the Exchange proposes that the position limits be set at the position limit of standardized equity options trading on the designated stock. In the event that

standardized options currently do not trade on the designated stock, then the Exchange will establish a position limit at the level that would be in effect if standardized options did trade on such stock. For Paired Stock Differential Options, the Exchange proposes that the position limits be set at the lower of the separate position limits of standardized equity options trading on the designated and benchmark stocks. In the event that one or both of the stocks is not currently the subject of standardized options trading, then the Exchange will establish position limits as the lesser of those that would be in effect for standardized options on the stocks if such options were trading.

The Exchange also proposes, for position and exercise limit purposes, to require that positions in Differential options with the same designated or benchmark stock or narrow-based index be aggregated. For example, if a Paired Stock Differential option has been created using General Motors Corporation stock as the benchmark and Ford Motor Company as the designated stock, positions in that differential option will be aggregated with position in other Paired Stock Differentials and Equity Differentials using narrow-based indexes created using either General Motors or Ford as the benchmark or designated stocks to determine whether the account is in compliance with the position and exercise limit rules. However, with respect to the use of broad-based indexes as either the benchmark or designated index in an Equity or Index Differential, no aggregation of positions will be required. For example, if Equity Differentials are created using the S&P 100 as the benchmark index and AT&T Corp., Dow Chemical Company, and International Business Machines as designated stocks, members will not be required to aggregate positions in those Differential Options to determine whether an account is in compliance with position and exercise limit rules.

In consultation with the Commission, the Exchange will establish the appropriate option position limit for a Differential Index option, where the Exchange chooses as either a designated or benchmark index, a broad-based index that has been approved by the Commission for index warrant trading only. The position limit for a Differential Option using a narrow-based index warrant will be established using the Exchange's narrow-based index option rules.

The Exchange further proposes that Differential Index Options not be aggregated with other standardized options on the underlying designated

stock or index or on the underlying benchmark stock or index for purposes of determining whether an account is in compliance with position and exercise limit rules. The Exchange believes this policy is appropriate for the following reasons. First foremost, the value of Differential Index Options will be calculated in a different manner from the value of other currently traded standardized equity and index options. In fact, because of the subtraction of the performance of the benchmark from the designated stock or index, the value of a Differential Index Option may appreciate (depreciate) even as the value of the corresponding standardized option on the designated stock or index decreases (increases). Further, the value of a Differential Index Options is in part a function of the correlation between the designated stock or index and the benchmark (*i.e.*, the tendency of the designated stock or index and the benchmark to move concurrently). This correlation component of the Differential Index Option price is not considered in determining the value of other standardized options on either the designated or benchmark stock or index. As a result, the Differential Index Option is likely to be more or less sensitive to movements in the designated stock or index than the other standardized options on that stock or index, and changes in the Differential Index Option's price may be in the opposite direction from changes in other standardized options prices. Therefore, any attempt to aggregate Differential Index Options with other standardized options for determination of position limits would be combining contracts which, by nature, can change in value quite differently.

Differential Index Options also have certain terms not found in many other standard equity and index options. Each Differential Index Option contract changes in value as a function of the differential performance of a \$10,000 long position in the designated stock or index and a \$10,000 short position in the benchmark. Many standardized equity options are settled by physical delivery of 100 shares of the underlying stock, worth \$5,000 per contract for a \$50 stock, and feature American exercise. Standardized index options typically feature European-style exercise, cash settlement, and represent approximately \$25,000 worth of a basket of stocks (with the index at the 250 level). Any meaningful aggregation of positions in contracts with different terms would be difficult to establish as a simple rule, and would require a case-by-case analysis of the terms for each

Differential Index Option contract compared to other standardized contracts on the designated and/or benchmark stock or index.

The Exchange also believes that the aggregation of position limits hinders the probability of success of any new product. The aggregation of positions in Differential Options with positions in standardized options will result in the new product competing with the established product for a limited amount of potential volume. Thus, with aggregated position limits, new products cannot "grow the pie" and increase overall liquidity in all of the products; they start at a disadvantage which may be impossible to overcome.

FLEX Options. The Exchange is modifying its FLEX rules to provide for trading of FLEX options on Differential Index Options. In addition, the Exchange is deleting the list of index options on which it may trade FLEX options set forth in Rule 24A.4(b)(1) and is replacing it with a statement that the Exchange may trade FLEX options on any index or differential index (as defined in Chapter XXVIII) for which the Exchange has been approved to trade options or warrants. This change is consistent with American Stock Exchange Rule 903G(a)(1).

Customer Margin. The Exchange proposes to apply standard index options margin treatment to Differential Index Options. Index Differential Options on the relative performance of one broad-based index versus another will be margined as broad-based index options and short positions therein will require margin equal to the current market value of the Differential Index Option plus an amount equal to 15% of the market value of the Differential Index reduced by any out of the money amount to a minimum of the current market value of the option plus 10% of the Index. All other Index Differential Options, Equity Differential Options and Paired Stock Differential Options will be margined as narrow-based index options and short positions therein will require an amount equal to the current market value of the Differential Index Option plus an amount equal to 20% of the market value of the Differential Index reduced by any out of the money amount to a minimum of the current market price of the option plus 10% of the Index. The Exchange believes that this method of determining customer margin is appropriate because the range of volatilities expected for Differential Indexes should not be significantly different than the expected range for other indexes and equities. This is because the volatility of a Differential Index is based upon the volatilities of

the designated and benchmark indexes or stock and the correlation of these components.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ in particular, in that it will permit the trading of Differential Index Options pursuant to Exchange Rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities; and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-98-50 and should be submitted by June 3, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-12066 Filed 5-12-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41374; File No. SR-CBOE-99-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing and Trading of Generic Narrow-Based Index Options Under Rule 19b-4(e)

May 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 15, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The filing was amended on April 28, 1999.³ The proposed rule change has been filed by the CBOE as a "non-controversial" rule change under Rule 19b-4(f)(6)⁴ under the Act. The Commission is publishing this notice to

solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to amend Rule 24.2, *Designation of the Index*, to provide for the listing and trading of narrow-based stock index options pursuant to new Rule 19b-4(e) under the Act.⁵ The text of the proposed rule change follows. Proposed new language is in *italics*; proposed deletions are in brackets:

* * * * *

CHAPTER XXIV

Index Options

* * * * *

Designation of the Index

Rule 24.2 (a) The component securities of an index underlying an index option contract need not meet the requirements of Rule 5.3. *Except as set forth in subparagraph (b) below*, [T]he listing of a class of index options on a new underlying index will be treated by the Exchange as a proposed rule change subject to filing with and approval by the Securities and Exchange Commission ("Commission") under Section 19(b) of the Exchange Act.

(b) [A rule change proposing the listing of a class of index options on a new underlying narrow-based index may be designated by the Exchange as constituting a stated policy, practice or interpretation with respect to the administration of this Rule 24.2 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act, thereby qualifying the rule change for effectiveness upon filing with the Commission, if the Exchange prefiles with the Commission a draft copy of the rule change not less than one week before it is filed, and if the Exchange proposes to commence trading in the subject class of index options not earlier than 30 days after the date of filing, and] *Notwithstanding paragraph (a) above, the Exchange may trade options on narrow-based index options pursuant to Rule 19b-4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied:*

(1)-(12) No change.

(c) No change.

* * * * *

⁵ 17 CFR 240.19b-4(e).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE is proposing to amend Rule 24.2, *Designation of the Index*, to provide for the listing and trading of narrow-based stock index options pursuant to new Rule 19b-4(e) under the Act. Certainly, CBOE Rule 24.2 permits the Exchange to list and trade options on narrow-based indexes thirty days after a filing describing the index option is made under Section 19(b)(3)(A) of the Act, provided that the index meets the generic listing criteria set forth in Rule 24.2(b). The recent Commission release adopting new Rule 19b-4(e) ("New Products Release"),⁶ however, no longer requires a Section 19(b)(3)(A) filing and subsequent waiting period so long as the exchange relying on the new Rule has generic listing criteria approved by the Commission and meets certain other requirements.

The New Products Release indicated that products meeting the listing criteria approved by the Commission in its 1994 Generic Narrow-Based Index Options approval order⁷ (as set forth in CBOE Rule 24.2) qualified for filing under new Rule 19b-4(e), so long as an exchange eliminated the Section 19(b)(3)(A) rule filing requirement from its existing rules.⁸ The Exchange is, therefore, proposing to eliminate the Section 19(b)(3)(A) rule filing requirement in Rule 24.2 and instead incorporate the provisions of new Rule 19b-4(e). The Exchange represents that it will use new Rule 19b-4(e) in accordance with the

⁶ See *Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products*, Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

⁷ See, *Securities Exchange Act Release No. 34157* (June 3, 1994), 59 FR 30062 (June 10, 1994).

⁸ See, *New Products Release* at note 89.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Timothy H. Thompson, Director, Regulatory Affairs, CBOE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 20, 1999.

⁴ 17 CFR 240.19b-4(f)(6).

terms and conditions set forth in the order approving that rule.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁹ in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder¹¹ because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the rule change be accelerated to become operative immediately to ensure that the Exchange not be disadvantaged in the listing of new index option products vis-a-vis the American Stock Exchange

("Amex"). Amex filed a similar rule change with the Commission that became operative as of March 11, 1999. Additionally, the Exchange notes that the public has had ample notice of the Commission's New Products Release, which describes the kind of rule change effected by the Exchange in the instant proposal. The Commission finds that accelerating the operative date of the rule change as proposed furthers the aims of the New Products Release and is consistent with the protection of investors and the public interest, and thus designated the date hereof as the operative date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-16, and should be submitted by June 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-12067 Filed 5-12-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41376; File No. SR-CBOE-99-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Criteria for Warrants

May 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 6, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 31.5.E to add an alternative set of distribution criteria for broad-based stock index warrants. The text of the proposed rule change follows. *Italics* indicate material to be added.

* * * * *

Chicago Board Options Exchange, Inc.
Rules

* * *

CHAPTER XXXI
Criteria for Original Listing
* * *

Rule 31.5 Criteria for Eligibility of Securities

* * *

E. Currency, Currency Index and Stock Index Warrants

* * *

(2) Public Distribution. *The Exchange may list warrants that meet either of the two alternative sets of criteria below.*

(i) Alternative 1

Warrants outstanding ..	1,000,000
Principal amount/aggregate market value	\$4,000,000
Number of public holders	400

(ii) Alternative 2

Warrants outstanding ..	2,000,000
Principal amount/aggregate market value	\$12,000,000

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 17 CFR 200.30-3(a)(12).

Number of public holders case by case
 Initial price \$6/warrant
 * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend CBOE Rule 31.5.E, which sets forth the listing criteria for "Currency, Currency Index and Stock Index Warrants." Currently, the listing criteria for warrants under Exchange Rule 31.5.E require that the following public distribution requirements be met before a warrant may be listed for trading on the Exchange: (1) Warrants outstanding: 1,000,000; (2) principal amount/aggregate market value: \$4,000,000; and (3) number of public holders: 400. Other marketplaces have similar listing criteria for warrants. Although not specifically included in Rule 31.5, the Exchange represents that industry practice has been to discourage the listing of instruments of this kind that are priced below \$4 per unit—a practice that the CBOE finds appropriate.

CBOE member firms have advised staff of the Exchange that the existing 400-holder requirement for broad-based stock index warrants frequently poses a significant barrier to seeking a listing on the CBOE. Unlike offerings of common stock and common stock warrants, offerings of stock index warrants are limited to options-approved accounts and are primarily directed to institutional and high net worth clients. The Exchange argues that member firms often find it considerably more cost effective to offer stock index warrants either offshore or in the over-the-counter (OTC) derivatives market. This is because achieving the existing 400-holder requirement usually entails an extensive and drawn out marketing

effort—an effort that, in the Exchange's view, does not provide any additional market or investor benefits. At the same time, CBOE believes that stock index warrant investors would be generally better served by having these securities listed and traded on the Exchange, where transaction size and prices are broadly disseminated.

To be more competitive with the OTC and overseas marketplaces in the listing of stock index warrants, the Exchange is proposing to establish an alternative set of distribution criteria without a minimum public holder requirement. Under this alternative, the minimum number of public holders required for a stock index warrant to be listed would not be defined, but would be determined on a case by case basis. Other criteria would include: (1) Minimum warrants outstanding: 2,000,000, which is double the existing requirement; (2) minimum principal amount/aggregate market value: \$12,000,000, which is three times the existing requirement; and (3) minimum price: \$6 per warrant, which is one and one-half times the minimum based on existing informal guidelines. Adoption of these criteria would, in the opinion of the Exchange, enhance listing competition for these products while accommodating the transaction size normally attractive to institutional and high net worth investors, who the Exchange believes to be major users of these types of instruments.

The Exchange does not believe that the minimum holder requirement has the importance for stock index warrants that it may have for common stock or common stock warrant listings. Stock index warrants, it argues, are economically equivalent to standardized options, which are routinely introduced without any immediate "open interest." While investor interest may ultimately develop for these products, there is no distribution whatsoever when the contract is first listed. When interest develops subsequently, market-makers are expected to provide liquidity and produce quotes based on market variables even without customer order flow.³ The Exchange believes that this is equally true for broad-based stock index warrant contracts. A minimum original distribution should not impair the ability of market-makers to maintain fair and orderly markets.⁴

³ The Exchange argues that the underlying cash price as well as any related futures contracts are of prime importance.

⁴ For example, on most broad-based stock indexes, such as the S&P 500, Dow Jones Industrial Average, Nikkei 225 and FT-SE 100, there are a number of domestic, as well as international derivative instruments, including options, futures,

The Exchange asserts that neither CBOE nor any of the other registered exchanges require a minimum number of holders as a precondition to listing and trading stock index options, because investor interest and liquidity in these instruments—as in the case of standard options and LEAPS—are derived from the availability of other products. The Exchange believes that stock index warrants—being economically equivalent to index options and available only to customers with options-approved accounts—can be expected to be an equally attractive and liquid security.

2. Statutory Basis

The proposed rule changes are designed to enable the CBOE to compete effectively with the overseas and OTC markets for these types of securities. As such, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5),⁵ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

options on futures, and a variety of other structured products.

⁵ 15 U.S.C. 78f(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-14, and should be submitted by June 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-12068 Filed 5-12-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41366; File No. SR-CSE-99-04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Amending the Minor Rule Violation Program To Include Violations of Limit Order Display Obligations

May 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 15, 1999, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the CSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend Exchange Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to include Rule 12.10 and Interpretation .01 under that rule, which requires Members to display customer limit orders by complying with Rule 11Ac1-4 under the Act. The text of the proposed rule change is available at the Office of the Secretary, the CSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposal would amend CSE Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules ("Minor Rule Violation Program" or "Program"), which provides for an alternative disciplinary regimen involving violations of Exchange rules that the Exchange determines are minor in nature. In lieu of commencing a disciplinary proceeding pursuant to Rule 8.1 through 8.14, the Minor Rule Violation Program permits the Exchange to impose a fine, not to exceed \$2500, on any member, member organization, or registered or non-registered employee of a member or member organization ("Member") that the Exchange determines has violated a rule included in the Program. Adding a particular rule violation to the Minor Rule Violation Program does not circumscribe the Exchange's ability to treat violations of those rules through more formal disciplinary measures or deprive a Member of the procedural rights embedded in the disciplinary rules. The Minor Rule Violation Program simply provides the Exchange with greater flexibility in addressing rule violations that warrant a stronger regulatory response after the issuance of cautionary letters and yet, given the nature of the violations, do not rise to the level of requiring formal disciplinary proceedings.

The Exchange is now proposing to add the failure to properly display customer limit orders contained in Interpretation .01 to Rule 12.10 to the list of rule violations and fines included in the Minor Rule Violation Program. The Exchange believes that limit order display violations often are technical in nature and, in most cases, are best addressed in a summary fashion. However, because Interpretation .01 to Rule 12.10 is predicated on compliance

with SEC Rule 11Ac1-4, which provides important customer protections, violations of this Interpretation require sanctions more rigorous than a series of cautionary letters prior to formal proceedings.

Therefore, the Exchange is proposing to use a recommended fine schedule of \$100 per violation of the Interpretation. Exchange regulatory staff will review the facts and circumstances related to a purported violation and determine the appropriateness of a fine or other sanction. The Exchange notes that the minor violation fine schedule is merely a recommended fine schedule and that fines of more or less than the recommended fines can be imposed (up to \$2,500 maximum) in appropriate circumstances. Also, as indicated above the Exchange retains the ability to proceed with formal disciplinary action if the violations, in the Exchange's view, involve circumstances where more severe sanctions would be warranted.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Sections 6(b)(5),⁴ 6(b)(6),⁵ 6(b)(7),⁶ and 6(d)(1)⁷ in particular. The proposed rule change is consistent with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. Specifically, the proposed rule change will augment the Exchange's ability to police its market and will increase the Exchange's flexibility in responding to minor violations of Exchange rules.

The proposal also is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide appropriate discipline for violations of SEC and Exchange rules. The proposed rule change will provide a procedure to appropriately discipline those Members whose violations are minor in nature. In addition, because Rule 8.15 provides procedural safeguards to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of Members consistent with Sections 6(b)(7) and 6(d)(1) of the Act.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78f(b)(6).

⁶ 15 U.S.C. 78f(b)(7).

⁷ 15 U.S.C. 78f(b)(1).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-99-04 and should be submitted by June 3, 1999.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder.⁹ Section 6(b)(5) of the Act¹⁰ states that the rules of an exchange must be designed to a facilitate securities transactions and to remove implements to and perfect the mechanism of a free and open market. The Commission believes that the proposed rule change will augment the Exchange's ability to

police its market and will increase the Exchange's flexibility in responding to minor violations of limit order display obligations.

Pursuant to Section 19(b)(2) of the Act,¹¹ the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing of the proposal in the **Federal Register** in that the proposed rule change will further the Exchange's ability to provide effective oversight of SEC and Exchange rules in an expeditious manner. The Commission also believes the proposed rule change will provide the Exchange greater flexibility in punishing violations of these rules.

It is therefore ordered, pursuant to Section 19(b)(2)¹² of the Act, that the proposed rule change (file No. SR-CSE-99-04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-12065 Filed 5-12-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41378; File Nos. SR-MSRB-98-06, SR-NASD-98-20, SR-NYSE-98-07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; National Association of Securities Dealers, Inc.; and New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes Regarding the Confirmation and Affirmation of Securities Transactions

May 7, 1999.

The Municipal Securities Rulemaking Board ("MSRB"), the National Association of Securities Dealers, Inc. ("NASD"), and the New York Stock Exchange, Inc. ("NYSE") have filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ proposing amendments to their confirmation/affirmation rules.² Notices of the

proposals were published in the **Federal Register** on April 13, 1998.³ The Commission received two comment letters.⁴ For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

Currently, the confirmation/affirmation rules of the MSRB, NASD, and NYSE (collectively referred to as self-regulatory organizations or "SROs")⁵ require the SROs' broker-dealer members to use the facilities of a securities depository⁶ for the electronic confirmation and affirmation of transactions in which the broker-dealer provides either delivery-versus-payment ("DVP") or receive-versus-payment ("RVP")⁷ privileges to its customer. Broker-dealers generally extend DVP and RVP privileges only to their institutional customers.

Certain vendors of electronic trade confirmation ("ETC") services have requested that they be allowed to provide confirmation/affirmation services for DVP and RVP trades even though they are not registered clearing agencies. Under the rule changes, the SROs' broker-dealer members will be able to comply with the confirmation/affirmation rules by using the facilities of either a registered clearing agency or a "qualified vendor" for the confirmation and affirmation of DVP and RVP transactions.⁸

1998, the MSRB filed and on April 16, 1999, amended its proposed rule change (File No. SR-MSRB-98-06). The amendments filed by the MSRB, NASD, and NYSE represent technical amendments to the proposed rule changes and as such do not require republication of notice.

³ Securities Exchange Act Release Nos. 39830 (April 6, 1998), 63 FR 18060 (NYSE); 39831 (April 6, 1998), 63 FR 18057 (NASD); 39833 (April 6, 1998), 63 FR 18055 (MSRB). On May 1, 1998, the Commission extended the comment period for the proposals for thirty days. Securities Exchange Act Release No. 39944 (May 1, 1998), 63 FR 25531.

⁴ Letters from Mari-Anne Pisarri, Esq., Pickard and Djinis, on behalf of Thomson Financial Services ("Thomson") (May 12, 1998) and Ronald J. Kessler, Chairman, Operations Committee, Securities Industry Association ("SIA") (June 1, 1998).

⁵ The confirmation/affirmation rules are MSRB Rule G-15(d)(ii), NASD Rule 11860(a)(5), and NYSE Rule 387(a)(5).

⁶ The term "securities depository" is defined in the SROs' confirmation/affirmation rules as a clearing agency that is registered under Section 17A of the Act, 15 U.S.C. 78q-1.

⁷ DVP privileges allow an institutional seller to require cash payment before delivering its securities at settlement. RVP privileges allow an institutional buyer to pay for its purchased securities only when the securities are delivered.

⁸ Just being a qualified vendor will not entitle an ETC vendor to provide "matching" services (in which broker-dealer confirmations are matched with institutional allocation instructions to produce affirmed confirmations) as part of its confirmation/affirmation system. The Commission has concluded

⁸ 15 U.S.C. 78f.

⁹ In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f)

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2).

¹³ 7 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

² On February 18, 1998, the NYSE filed and on March 26, 1999, amended its proposed rule change (File No. SR-NYSE-98-07). On March 5, 1998, the NASD filed and on December 22, 1998, and February 17, 1999, amended its proposed rule change (File No. SR-NASD-98-20). On April 3,

In order to become a qualified vendor under the rule changes, an ETC vendor will be required to certify to its customers that:

(1) With respect to its electronic trade confirmation/affirmation system, it has a capacity requirements, evaluation, and monitoring process that allows the vendor to formulate current and anticipated estimated capacity requirements;

(2) Its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/affirmation service during the upcoming year;

(3) Its electronic trade confirmation/affirmation system has formal contingency procedures, that the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed and updated on a regular basis;

(4) Its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures, and its procedures designed to protect against security breaches are followed; and

(5) Its current assets exceed its current liabilities by at least \$500,000.

In addition, a qualified vendor will be required initially and annually to submit to the SROs and to the Commission staff a report prepared by independent audit personnel (referred to in the rule changes as "Auditor's Report"). Each Auditor's Report must: (1) verify the certifications described above; (2) contain a risk analysis of all of the entity's information technology systems; and (3) contain the written response of the entity's management to the Auditor's Report's verifications and risk analysis. The Auditor's Report must be deemed not unacceptable by Commission staff.⁹

Qualified vendors will be subject to ongoing requirements under the rule changes. For each transaction in which it provides confirmation/affirmation services, a qualified vendor will be required to: (1) deliver a trade record to a registered clearing agency in the clearing agency's format; (2) obtain a control number for the trade record from the clearing agency; (3) cross reference

the control number to the confirmation and subsequent affirmation of the trade; and (4) include the control number when delivering the affirmation of the trade to the clearing agency. A qualified vendor will be required to notify the SROs and the Commission staff in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation system. In addition, a qualified vendor will be required to supply supplemental information regarding its confirmation/affirmation system as requested by the SROs or by the Commission staff. If a qualified vendor intends to cease providing confirmation/affirmation services, it must notify the SROs and the Commission staff in writing.

II. Comment Letters

The Commission received two comment letters in response to the notices of the SROs' proposed rule changes.¹⁰ The SIA Operations Committee stated that it supports the proposed rule changes. The Operations Committee expressed its belief that the proposed criteria should address the regulatory concerns associated with allowing new entrants into the clearance and settlement system while providing to the system the innovations and cost reductions that competition can produce.

Thomson stated that it was delighted that the SROs are amending their rules to allow commercial vendors to process institutional trade confirmations and affirmations.¹¹ However, as discussed below, Thomson believes that the SROs' proposals should be changed (1) to make the initial and ongoing process of designating qualified vendors objective and self-executing and (2) to limit the audit requirements to the areas that pose the most risk to post-trade information processing systems.

Thomson stated that it supports the fundamental approach of the Auditor's Reports. However, Thomson believes that the scope of the Auditor's Reports is too broad. Thomson particularly objected to the requirement that the Auditor's Report contain an audit of all of the entity's information technology systems. Thomson stated that it believes that auditing the certification that the

entity would be required to provide under the proposed rule changes is sufficient to address the risk factors related to allowing unregulated entities to provide confirmation/affirmation services.

The Commission believes that the scope of the Auditor's Reports under the rule changes is reasonable. In particular, the Commission believes that the risk analysis component of the Auditor's Report is necessary to determine whether an entity should be a qualified vendor.

Because electronic confirmation/affirmation services are critical to the settlement of institutional securities trades, a breakdown in the confirmation/affirmation system could have a significant negative impact on the entire clearance and settlement system. Moreover, problems or insufficiencies in any aspect of a qualified vendor's information technology system could adversely affect the qualified vendor's confirmation/affirmation system. As a result, the Commission believes that it is appropriate for the Auditor's Reports to contain a risk analysis of the entity's information technology systems.

In addition, registered clearing agencies that provide confirmation/affirmation systems are already subject to extensive regulatory requirements. Among other things, registered clearing agencies must submit rule changes to the Commission for approval and are subject to inspections, including systems reviews, by the Commission staff. As a result, the Commission has continuous oversight and authority over registered clearing agencies' operations, including any confirmation/affirmation services they provide. Under the SROs' rule changes, qualified vendors will not be subject to such continuous oversight and authority. The Commission believes that the requirements under the rule changes with respect to the Auditor's Reports are reasonably intended to assure that the Commission and the SROs will be able to prevent an entity from becoming a qualified vendor if its confirmation/affirmation system poses a risk of compromising the safety and soundness of the national clearance and settlement system.

Thomson objected to the idea that the Commission staff would issue a no-action letter to indicate that an entity's initial Auditor's Report is not unacceptable. Thomson stated that the process of becoming a qualified vendor should be largely self-executing in that an entity should become a qualified vendor automatically as long as its initial Auditor's Report does not contain any findings by the auditor of material

that matching services may be provided only by a registered clearing agency or by an entity that has received an exemption from clearing agency registration. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943.

⁹ At this time, the Commission staff intends to indicate that an entity's initial Auditor's Report is not unacceptable by issuing a letter to the entity stating that it will not recommend enforcement action against any of the SROs' member organizations that elect to use the confirmation/affirmation systems of the entity. Subsequent Auditor's Reports submitted to the Commission staff by the qualified vendor will be considered acceptable unless the Commission staff otherwise informs the qualified vendor.

¹⁰ *Supra* note 4.

¹¹ Thomson's comment letter refers to differences in the proposed rule changes from a statement of principles agreed to between the SIA and Thomson. The NASD noted in the first amendment to its rule filing that it "does not believe that the statement of principles is relevant, much less controlling, with respect to whether there is a statutory basis for the proposed rule change."

weakness. Thomson stated that under the self-executing process it supports, the Commission and the SROs "would function more as report depositories than traditional application examiners."

The Commission believes that in order for Commission staff to adequately review an Auditor's Report to determine whether it is not unacceptable, the staff must do more than simply read the report to determine whether it contains a finding of material weakness. Under the rule changes, the Commission staff may deem an Auditor's Report unacceptable for any reason if it believes that the report demonstrates that an entity would not be capable of providing confirmation/affirmation services in a manner that would not compromise the integrity of the national clearance and settlement system.

Thomson also contended that there is no legal context in which the Commission staff may issue no action letters to qualified vendors. Thomson stated that the only party to which the Commission staff is authorized to recommend or not recommend enforcement action is the Commission itself and that any such recommendation or decision to not make a recommendation must be related to the federal securities laws or Commission rules promulgated thereunder. Thomson expressed concern that the proposed rule changes do not provide objective standards that the Commission staff will use when considering whether to grant the initial no-action letter.

The Commission believes that the use of a no-action letter to indicate that an entity's initial Auditor's Report is not unacceptable is a reasonable method for indicating that an entity is a qualified vendor under the SROs' rules. Section 21 of the Act, which authorizes the Commission to investigate and to bring enforcement action with respect to violations of the rules of a self-regulatory organization by any person, provides a legal context for the issuance of a no-action letter to qualified vendors.¹² The Commission also believes that the rule changes are reasonably designed to provide objective guidance to the Commission in its review of the Auditor's Reports and to the SROs to deny "qualified" status to and to terminate the "qualified" status of ETC vendors whose confirmation/affirmation services fall below acceptable standards.

Thomson stated that it agrees with the requirement that a qualified vendor notify the SROs and the Commission staff if it decides to stop providing

confirmation/affirmation services. Thomson objected to a provision in the NASD's proposed rule change that states a qualified vendor may cease to be qualified if the Commission staff (1) deems an Auditor's Report unacceptable either because it contains any finding of material weakness or for any other identified reasons or (2) notifies the qualified vendor that it is no longer qualified.

As noted above, the Commission staff may deem an Auditor's Report unacceptable for any reason if it believes that the report demonstrates that an entity would not be capable of providing confirmation/affirmation services in a manner that would not compromise the integrity of the national clearance and settlement system. In addition, the Commission staff may revoke a no-action position if it determines that a revocation is consistent with the public interest or the protection of investors.

III. Discussion

Under Section 19(b)(2) of the Act, the Commission is directed to approve the SROs' proposed rule changes if it finds that they are consistent with the requirements of the Act and the rules and the rules and regulations thereunder applicable to the SROs.¹³ Sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) of the Act¹⁴ require, among other things, that the SROs' rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Sections 6(b)(8), 15A(b)(9), and 15B(b)(2)(C) of the Act¹⁵ also require that the SROs' rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. For the reasons discussed below, the Commission believes that the SROs' proposed rule changes are consistent with their obligations under the Act.

The Commission believes that the changes to the SROs' confirmation rules are consistent with the SROs' obligations under the Act because they will require unregulated entities that wish to provide confirmation/affirmation services to establish links and interfaces with a registered clearing agency. This requirement should increase cooperation and coordination among the SROs' members, registered

clearing agencies, and entities that become qualified vendors under the rule changes.

In addition, in reviewing the proposed rule changes the Commission has considered whether the proposed rule changes would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the rule changes have been carefully designed to allow unregistered ETC vendors to provide confirmation/affirmation services for institutional trades in a manner which is not unduly burdensome for ETC vendors and which preserves the safety and soundness of the national system for the clearance and settlement of securities transactions. Therefore, the Commission believes that the SROs' proposed rule changes should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore *ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-MSRB-98-06, SR-NASD-98-20, SR-NYSE-98-07) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-12139 Filed 5-12-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41367; File No. SR-NASD-98-88]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Listing and Continued Listing Determinations

May 4, 1999.

On November 27, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78f(b)(5), 78o-3(b)(6), and 78o-4(b)(2)(C).

¹⁵ 15 U.S.C. 78f(b)(8), 78o-3(b)(9), and 78o-4(b)(2)(C).

¹² 15 U.S.C. 78u.

¹⁶ 17 CFR 200.30-3(a)(12).

Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder concerning the procedures followed by the Association in listing and delisting an issuer.² The NASD amended the proposal on December 15, 1998.³ Notice of the proposal, as amended, was published in the **Federal Register** on January 8, 1999 ("Notice").⁴ The Commission did not receive any comment letters on the fling.

I. Introduction and Background

The NASD is proposing to replace its existing rules setting forth the procedures by which issuers may be denied listing on, or delisted from, the Nasdaq Stock Market. The proposed revised code of listings procedures ("Revised Listings Code") codifies procedures that are already used by the Association in practice. In addition, the Revised Listing Code contains greater detail about the review process and adds a number of provisions, including those for the maintenance of the record on review, fees for reviews, and prohibitions on communications outside of the official proceeding.⁵ This proposal is designed to address shortfalls in the NASD's listings procedures identified in the Commission's 21(a) Report and a previous report on the NASD's governance structure.⁶

II. Description of the Proposal

The revised Rule 4800 Series applies only to decisions to deny, limit, or prohibit the listing of an issuer's securities on the Nasdaq Stock Market. The substantive criteria for listing on the Nasdaq Stock Market are contained in other portions of the Rule 4000 Series. Rule 4810 of the Revised Listings Code describes the limited purpose of the new Rule 4800 Series as well as certain general provisions.

Rule 4810 also provides that an issuer may request an extension of time to comply with any of the standards contained in the Rule 4000 Series or an exception to those standards. It is solely within the NASD's discretion whether to grant such an extension. In determining whether to grant an extension or exception, the NASD reviewing body at each level of review will consider the original issue cited, but may also consider any additional issues, regardless of whether they were considered earlier in the proceeding.⁷ The Revised Listings Code provides that the NASD will notify the issuer if additional issues are being considered in determining whether to grant a request for an exception or exemption, and the issue will be given an opportunity to respond to such issues.

Rule 4810 particularly notes that "the issuer may be subject to additional or more stringent criteria for the initial or continued inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities inadvisable or unwarranted in the opinion of the Association, even though the securities meet all enumerated criteria for initial or continued inclusion in the Nasdaq Stock Market."⁸

Revised Rule 4815 through 4860 provide the general procedures that the Association and an issuer must follow with respect to any determination by the NASD to deny initial or continued listing to an issuer, including retention of records for the various Association adjudicators.⁹ Under revised Rule 4815, Nasdaq staff in the Listing Qualifications Department or Listing Investigation Department will notify an

issuer in writing of any decision to limit or prohibit the initial or continued listing of its securities. This notification will describe the specific grounds for the determination.

Revised Rule 4820 provides that within 7 calendar days of receipt of this notification, the issuer may request a hearing for review of the determination.¹⁰ If an issuer requests a review, the staff determination will generally be stayed pending the outcome of the review.¹¹ If no request for review is made, the determination will take effect after the time to request review has expired.

Revised Rule 4830 provides that all requests for review will be considered by an independent panel ("Listing Panel") composed of at least two persons who are not employees of the NASD or its subsidiaries. The Nasdaq Board of Directors will designate potential panelists. Panelists may include both securities and non-securities professionals, such as NASD members, issuers, attorneys, or accountants. The Listing Panel hearing will, to the extent practicable, be scheduled within 45 days of the date that the request for hearing is filed. After the hearing, the Listing Panel will issue a written decision that is effective immediately (unless the decision itself provides otherwise).

Under revised Rule 4840, an issuer may request review of the Listing Panel's decision by the Nasdaq Listing and Hearing Review Council ("Review Council") within 15 days.¹² In addition, any member of the Review Council may decide to review a decision of the Listing Panel within 45 days of the date of the issuance of that decision. Review Council review of a matter generally

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 15, 1998.

⁴ See Securities Exchange Act Release No. 40874 (December 31, 1998), 64 FR 1258.

⁵ The Association is also proposing to temporarily move the existing Rule 4800 Series relating to other grievances concerning the Association's automated systems to the Rule 9700 Series, and reference to the delisting procedures in the current Rule 4800 Series will be removed prior to this relocation. The NASD and NASD Regulation, Inc. plan to file changes to the Rule 9500 Series in the near future and, upon approval of those changes, the Rule 9700 Series will be deleted and non-listing related grievances and denials of access involving Nasdaq's automated systems will be reviewed through Rule 9500 Series procedures.

⁶ See Commission's Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market dated August 8, 1996; Securities Exchange Act Release No. 37538 (August 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3-9056); and *Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors* (1995).

⁷ The levels of review are described in the following paragraphs.

⁸ See revised Rule 4810, *Purpose and General Provisions*.

⁹ See revised Rule 4830(b) (the record for a proceeding before a Listing Qualification Panel is kept by the Nasdaq Hearings Department); revised Rule 4840(d) (the record for a proceeding before the Review Council is kept by the Nasdaq Office of General Counsel); and revised Rule 4850(b) (the record for a proceeding before the NASD Board is kept by the Nasdaq Office of General Counsel).

¹⁰ The fee for such a review remains at its existing level of \$1,400 for a review based on written submission and \$2,300 for a review based on an oral presentation. The NASD is proposing to relocate the fee provisions from Rule 4530 to revised Rule 4820(c).

¹¹ The Association is permitted, however, to suspend a security's inclusion in Nasdaq if the securities are not in compliance with the qualification requirements of Rule 4310 or Rule 4320, or those requirements imposed by the NASD under Rule 4330(a). In that event, Nasdaq will notify the issuer prior to the suspension or as soon as practicable thereafter. See Rule 4330(b). Furthermore, Nasdaq may halt trading in a security pending the dissemination of material news or when Nasdaq requests information from an issuer relating to material news, qualification matters, or other information necessary to protect the public interest. See Rule 4120(a)(5).

¹² The Review Council is a compositionally balanced panel of no fewer than eight and no more than 18 members. Of these members, at least five must be Non-Industry, and not more than 50 percent may be engaged in market-making activity or employed by a member whose revenues from market-making activity exceed ten percent of its total revenues. See Nasdaq By-Laws Article 5.2(a).

does not stay the Listing Panel decision (unless the call for review specifies otherwise). The NASD is proposing to impose a \$1,400 fee for a Review Council review. This fee is in addition to the current \$1,400 fee for the Listing Panel's review of the Nasdaq staff's initial determination.¹³

Under the Revised Listing Code, the Review Council will review matters based on the written record and will issue a decision to affirm, modify, or reverse the Listing Panel's decision. Alternatively, the Review Council can choose to hold additional hearings, or remand the matter to Nasdaq staff or to the Listing Panel.¹⁴ This decision, although subject to a call for review by the NASD Board of Governors ("NASD Board"), will be effective immediately, unless it specifies to the contrary.

Any member of the NASD Board may choose to review a Review Council decision for review at its next meeting that is at least 15 calendar days or more following the date of the Review Council decision. An issuer may not request that the NASD Board review the Review Council decision. If the NASD Board does not determine to review a Review Council decision, the issuer will be notified that the Review Council decision represents the final action of the NASD. If the NASD Board does call a Review Council decision for review, the NASD Board will generally review the matter based on the record before the Review Council. Ordinarily, the issuer will not be permitted to supplement the record on review.¹⁵ The NASD Board may affirm, modify, or reverse the Review Council decision and may remand the matter to the Review Council, the Listing Panel, or Nasdaq staff.

Revised Rule 4870 defines what is included in the record on review at each level of a Rule 4800 proceeding. At each level of review, the issuer will be provided a list of documents included in the record on review. In addition, any subsequent public filings made by the issuer and any subsequent information released to the public by the issuer may be added to the record on review, as

well as any subsequent correspondence between the Association and the issuer. Furthermore, at any level of review, the deciding body may take note of the issuer's current Nasdaq Stock Market bid price and number of market makers at the time of consideration. The written record, as well as any documents excluded from the written record, will be maintained until the date upon which the decision becomes final, including, if applicable, upon conclusion of any review by the Commission or a federal court.¹⁶

The Revised Listings Code prohibits any communication relevant to the merits of a proceeding amongst anyone participating in or advising in the consideration of a listing or delisting matter (including members of the Listing Panel, Review Council, or NASD Board and NASD employees), unless the issuer and the appropriate Nasdaq staff have been provided notice and an opportunity to participate in the communication.¹⁷ This proposed limitation is designed to prevent information outside of the record from being considered in rendering a decision in a matter. The NASD indicates that they currently expect Nasdaq staff to waive participation in such communications. The Revised Listings Code also specifies that if an issuer submits a proposal to resolve matters at issue in a Rule 4800 Series proceeding, communications about that submission will be excluded from the prohibitions discussed above.¹⁸

III. Discussion

The Commission finds that the proposal is consistent with the Act and in particular with those provisions applicable to a national securities association. Specifically, the Commission believes that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act¹⁹ because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission believes that the amendments, by codifying, expanding, and clarifying

existing procedures, strike a reasonable balance between the Association's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market. The amendments provide fair procedures for issuers, while giving Nasdaq the ability to deny, limit, or delist an issuer that has failed to meet the substantive standards outlined in the Rule 4000 Series.

For the most part, the Revised Listings Code codifies present Association procedures. The general system of review remains basically the same. In the past, many of these procedures were not codified, and instead were explained through correspondence during the course of a listing or delisting proceeding. As a result, it was often unclear how certain of the practices or procedures were applied in particular cases. The Revised Listings Code clearly sets forth the procedures applicable to all issuers.

One of the most important clarifications addresses an issuer's ability to request an extension of time to comply with any of the standards set forth in the Rule 4000 Series or an exception to those standards at any time during the pendency of a Rule 4800 Series proceeding. While extensions and exceptions have always been granted, their availability was not readily apparent. The Commission believes it is essential for issuers to understand that they may request an extension of, or exception to, the NASD's codified procedures. Although the decision to grant such extensions and exceptions is within the discretion of the Association, the Commission notes that the NASD must exercise that discretion in a manner consistent with the Act generally and, in particular, with Section 15A(b)(6).²⁰

The impact of decisions at each level of review is also clarified in the Revised Listings Code. Review of a Listing Panel determination by the Review Council, and review of a Review Council decision by the NASD Board does not stay the previous determination. The ability to issue immediately a decision will allow the Association to act swiftly to delist a non-compliant issuer that is still trading on the Nasdaq Stock Market, or to permit an issuer that was wrongly delisted by the Nasdaq staff to return to the Nasdaq Stock Market more quickly.

Another important clarification is that each adjudicator, from the Nasdaq staff

¹³ The new fee is designed to recoup the costs of processing the request for review, including preparing and copying the record on review for the Review Council, covering staff resources within the Nasdaq Office of General Counsel for reviewing the record, advising the Review Council, preparing the decision, and covering a proportionate part of the expense of Review Council meetings. The fee is designed to be revenue neutral, to directly offset the costs associated with the Review Council's review.

¹⁴ The Review Council may, at its sole discretion, also hold additional hearings.

¹⁵ The NASD Board may, at its sole discretion, request additional information from the issuer or from Nasdaq staff and may, at its sole discretion, hold additional hearings.

¹⁶ Time is computed within the Revised Listings Code based on calendar days. In computing any period of time, the day of the act, event, or default from which the period of time begins is not included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or NASD holiday. An NASD holiday is any day on which the Nasdaq Stock Market or the executive offices of the NASD are closed for the entire day.

¹⁷ See revised Rule 4890, *Prohibited Communications*.

¹⁸ The NASD is also proposing to make conforming changes to Rules 4330 and 4480, and Rule 4530 will be removed because the substance of that Rule has been relocated to Rule 4820(c).

¹⁹ 15 U.S.C. 78o-3(b)(6).

²⁰ *Id.* No Association rule may unreasonably discriminate against one group of issuers versus another.

through the NASD Board, has the discretion to supplement the record. Thus, at each level of a proceeding under the Rule 4800 Series, the Listing Panel, Review Council, or the NASD Board, as part of its respective review, may:

1. Request additional information from the issuer;
2. Consider the issuer's bid price, market makers or any information that the issuer releases to the public, including any additional quantitative deficiencies reflected in the released information; and
3. Consider any failure to meet any quantitative standard or qualitative consideration set forth in the Rule 4000 Series, including failures previously not considered in the proceeding.

The issuer will be afforded notice of such consideration and given an opportunity to respond to actions taken by the adjudicator. The Commission believes that the ability to supplement the record with the most up-to-date information regarding the issuer will help to ensure that the reviewing body's decision is informed and appropriate under the circumstances.

There are also several new features in the Revised Listings Code. One of the most important restricts communication between Association adjudicators and parties to a listing determination.²¹ For example, the revised rules restrict communication between adjudicators and either the Nasdaq staff or the issuer, unless both are given the opportunity to participate. In addition, any prohibited communication must be entered in the record of the proceeding. The Commission believes that these safeguards will help to ensure greater fairness and openness in Association listings proceedings.

The Revised Listings Code also adds a comprehensive explanation of the content of the official record of a listing proceeding,²² as well as how the record is maintained through various levels of review.²³ This provision is another important improvement that should help to ensure that issuers are made aware of those factors that are considered in a listing or delisting decision, which in turn should assist them in challenging a decision that is adverse to them.

Finally, the Revised Listings Code imposes fees for Association review.²⁴ The Commission believes that these fees are consistent with Section 15A(b)(5) of the Act, which permits the allocation of fees on issuers using any facility or

system that the Association operates or controls. Specifically, the Commission believes that the proposal provides for the equitable allocation of reasonable fees among issuers using the resources of the Association. The Commission also believes that these fees are reasonable under the circumstances in that they are designed to recoup the costs of processing requests for review and holding the subsequent hearings.

The renumbering of the existing Rule 4800 Series to the Rule 9700 Series, as revised, will be effective immediately upon approval of this revised rule change.²⁵ The revised Rule 4800 Series will be made effective immediately upon approval for matters where the issuer has not yet received a Staff Determination, as defined in Rule 4815 of the Revised Listings Code. For issuers that have received notification from the staff that they will be delisted or denied initial inclusion prior to the date of approval, or that otherwise have matters pending before the Listing Panel or the Review Council prior to the date of approval of these rule changes, the existing Rule 4800 Series will continue to apply for 180 days. The Commission believes that this staggered schedule is appropriate because it will allow the Association to make an orderly transition from the existing rules to the Revised Listings Code.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with Act, and, particularly, with Section 15A.²⁶ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.²⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NASD-98-88) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-12064 Filed 5-12-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41371; File No. SR-NASD-98-96; Amendment No. 4]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Forms U-4 and U-5

May 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 28, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation" or "NASDR"), filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 4 to the proposed rule change³ as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 4 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amendment No. 4 provides additional detail on how NASDR will process the Proposed Forms U-4 and U-5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission previously published notice of the proposed rule change on April 22, 1999. See Securities Exchange Act Release No. 41326 (April 22, 1999), 64 FR 23366 (April 30, 1999) (File No. SR-NASD-98-96).

²¹ See revised Rule 4890, *Prohibited Communications*.

²² See revised Rule 4870, *Record on Review*.

²³ See revised Rule 4830(b).

²⁴ See revised Rules 4820(c) and 4840(b).

²⁵ See *supra* note 5, discussing relocation of the current Rule 4800 Series, *Grievances Concerning The Automated Systems*, to the Rule 9700 Series.

²⁶ 15 U.S.C. § 78o-3.

²⁷ 15 U.S.C. § 78c(f).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment No. 4 clarifies two aspects of the proposal⁴ and processing of the Proposed Forms U-4 and U-5 on the new World Wide Web-based Central Registration Depository ("Web CRD"). When a firm initiates a Form U-4 filing on Web CRD for the first time for an individual with disclosure information, a blank Page 3 of the Proposed Form U-4 will appear on the screen. Just as with the current paper filing system, a firm will be required to fill out the entire Page 3 to reflect all currently reportable disclosure information, some or all of which may already have been reported to CRD. Thereafter, as a convenience, a member will be able to retrieve the most recently filed electronic Page 3 of the Form U-4 and edit it for submission, rather than filling out the blank Page 3 for each subsequent filing.

There also will be paper processing available for one part of one Disclosure Reporting Page ("DRP") associated with the Proposed Form U-5. The 1996 Form U-5 DRP for internal reviews contains a Part II, which allows a terminated registered representative to provide a summary of the circumstances relating to an internal review disclosure submitted by the individual's former employer on the Form U-5. This Part II also appears on the Proposed Form U-5 Internal Review DRP. NASDR has informed the Commission staff that it is prepared to accept paper submissions of this Part II information by a terminated registered representative and that NASDR staff will enter the information on to The Web CRD system on behalf of the terminated registered representative.

2. Statutory Basis

NASDR believes that Amendment No. 4 is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASDR believes that Amendment No. 4 is consistent with the NASD's authority to adopt appropriate qualification and registration requirements for persons associated with NASD members or applicants for NASD membership. Article V, Section 2 of the NASD By-Laws authorizes the Board to prescribe the form used by any

person who wishes to make application for registration with the NASD. NASDR believes that Amendment No. 4 will make the filing of information with CRD easier and more efficient while continuing to provide complete information for use by regulators, SROs, and firms conducting pre-hire checks.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-96 and should be submitted by May 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-12069 Filed 5-12-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41365; International Series Release No. 1195; File No. SR-Phlx-99-12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Proposing To Set Temporarily the Add-On Margin Levels for Non-Customized Cross-Rate Foreign Currency Options

May 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 8, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis for a period of six months until November 4, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify the margin levels set forth in Phlx Rule 722(d) for non-customized cross-rate foreign currency options ("Cross-Rate FCOs") for a three month period or until it develops an updated method of calculating those margin levels. Specifically, the Exchange proposes to continue to require that the initial and maintenance margin requirement for customers' short positions in Cross-Rate FCOs equal an "add-on margin" of four percent of the current market value of the underlying FCO contract, plus 100 percent of the current market value of the option's premium, adjusted for "out-

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ See *supra* note 3.

of-the-money-amounts.”³ However, the overall initial and maintenance margin may not be reduced below the “minimum margin requirement.”⁴

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1991, the Commission approved the Exchange's proposal to list and trade three non-customized cross rate currency options—German mark/Japanese yen, British pound/German mark and British pound/Japanese yen options.⁵ The Commission's order approved the proposed margin system for these products for a one-year period only, because the Cross-Rate FCOs were new products and the Commission was concerned that the volatility in the underlying currencies could change significantly. Accordingly, the Commission stated that the Exchange should further analyze the add-on margin adequacy, and, within nine

months, submit the analysis along with a proposed rule change to retain the margin level or establish a new level.

As approved by the Commission in 1991, the Exchange's customer margin requirements for short positions for each Cross-Rate FCO applied a four percent add-on margin. The Exchange represented at the time that this add-on margin level was sufficient to cover each cross-rate product's historical volatility over seven-day intervals (for the July 30, 1990 to July 30, 1991 time period) with a confidence level of greater than 96 percent.

Due to an oversight, the Exchange did not file the required analysis and the proposed rule change with the Commission within nine months of the 1991 order. The Exchange now proposes to codify the four percent add-on margin level for three months or until it develops an updated method of calculating those margin levels. During this time, the Exchange will examine the add-on margin level to determine if it continues to cover the same confidence level or whether a different add-on margin level will be more appropriate. The Exchange anticipates filing a new proposed rule change within three months from the date that this order has been approved by the Commission. Applying the same reasoning as in 1991, the Exchange believes that the four percent add-on margin level currently provides an adequate level of customer's add-on margin coverage for the German mark/Japanese yen and British pound/German mark cross-rate products.⁶

2. Statutory Basis

The Exchange believes that the four percent level is an adequate add-on margin level for each German mark/Japanese yen and British pound/German mark FCO on a temporary basis, pending further analysis. For this reason, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁷ in general, and in particular, with Section 6(b)(5),⁸ in that it is designed to promote just and equitable principles of trade, as well as

to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Phlx's proposed rule change and believes, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act⁹ because it will facilitate transactions in securities, promote just and equitable principles of trade, and protect investors and the public interest by allowing the Exchange to continue to trade Cross-Rate FCOs on an interim basis, while using a margin requirement that the Commission believes is justifiable.

The Commission's 1991 order approved the four percent add-on margin for Cross-Rate FCOs for a one-year period. The Exchange now proposes to use a four percent add-on margin level for each non-customized cross-rate product for “a three-month period or until an updated method for calculating such margins * * * is developed.” The Exchange will further examine the adequacy of the four percent add-on margin level during that period.

The Exchange represents that for the period of January 16, 1998 to January 15, 1999, the four percent add-on margin level covered non-customized German mark/Japanese yen FCOs at a 94.49 percent confidence level, and covered non-customized British pound/German mark FCOs at a 100 percent confidence level. Based on those confidence levels, the lower of which is close to the 96 percent confidence level that was contained in the Commission's 1991 approval order, the Commission believes it is reasonable to permit the

³ For foreign currency put options, “out-of-the-money-amounts” equal the aggregate exercise price of the option minus the product of units per foreign currency contract and the closing spot price. See Phlx Rule 722(d).

For foreign currency call options, “out-of-the-money-amounts” equal the product of units per foreign currency contract and the closing spot price minus the aggregate exercise price of the option. See *id.*

⁴ The minimum margin on any put or call carried “short” in a customer's account may be reduced by any “out-of-the-money-amount” but shall not be less than 100% of the current market value of the option plus ¾ of the current market value of the underlying FCO contract, with the exception that the minimum margin on each such put option contract shall not be less than 100% of the current market value of the option plus ¾ of the option's aggregate exercise price amount. See *id.*

⁵ See Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 15, 1991). Although the Exchange received approval for the British pound/Japanese yen cross-rate FCO, the Exchange has not listed such a contract. Non-customized options carry specific contract terms for features such as contract size, strike price intervals, expiration date, price quoting and premium settlement.

⁶ For the British pound/German mark FCOs, the 4% add-on margin level covers the historical price volatility of all seven-day price movements at a 100% confidence level for the period January 16, 1998 to January 15, 1999.

For the German mark/Japanese yen FCOs, the 4% add-on margin level covers the historical price volatility of all seven-day price movements at a 94.49% confidence level for the period of January 16, 1998 to January 15, 1999. To attain a 96% confidence level for German mark/Japanese yen FCOs, the Exchange would have to apply a 4.5% add-on margin level.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(5).

Exchange to use a four percent add-on margin level for all Cross-Rate FCOs for a six-month period until November 4, 1999.¹⁰

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after the publication of the proposal in the **Federal Register**, so that the Exchange may immediately codify the four percent add-on margin until it can complete further analysis. The Commission finds good cause for approving the proposed rule change, on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, so that the Exchange may continue to use the four percent add-on margin for Cross-Rate FCOs during this six-month period, while it is reviewing the adequacy of margin levels for these products on a permanent basis.

The Commission requires that the Exchange file a proposed rule change to permanently codify the margin system for non-customized Cross-Rate FCOs by August 4, 1999, which is three months from the date of this order. That requirement will provide the Commission with sufficient time to review that proposed rule change before this order's approval of the four percent add-on margin expires on November 4, 1999.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal

office of the Phlx. All submissions should refer to File No. SR-Phlx-99-12 and should be submitted by June 3, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change is hereby approved on an accelerated basis for a period of six months until November 4, 1999.¹²

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-12063 Filed 5-12-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41377; File No. 600-31]

Self-Regulatory Organizations; Thomson Financial Technology Services, Inc.; Order Approving Application for Exemption From Registration as a Clearing Agency

May 7, 1999.

I. Introduction

On January 11, 1999, Thomson Financial Technology Services, Inc. (TFTS)¹ filed with the Securities and Exchange Commission (Commission) an application on Form CA-1² for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 (Exchange Act)³ and Rule 17Ab2-1 thereunder.⁴ Notice of TFTS's application was published in the Federal Register on February 4, 1999.⁵ The Commission received one comment letter in response to the notice of TFTS's

¹¹ 15 U.S.C. 78s(b)(2).

¹² In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

¹ TFTS is a wholly owned subsidiary of Thomson Information Services, Inc., which is indirectly owned by the Thomson Corporation. The Thomson Corporation is a public company incorporated under the laws of Ontario, Canada.

² Copies of TFTS's application are available for inspection and copying at the Commission's Public Reference Room in File No. 600-31. TFTS submitted a document entitled "Application for Exemptive Order" with its Form CA-1. That document was not considered in the evaluation of TFTS's application.

³ 15 U.S.C. 78q-1.

⁴ 17 CFR 240.17Ab2-1.

⁵ Securities Exchange Act Release No. 41003 (January 29, 1999), 64 FR 5691 (notice of filing of application for exemption from registration as a clearing agency).

exemption request.⁶ This order grants TFTS an exemption from registration as a clearing agency to offer an electronic trade confirmation (ETC) service and a central matching service subject to the conditions and limitations described below.

II. Description of TFTS's Services

TFTS will be permitted to offer two types of services under this order: (1) an ETC service where TFTS will transmit messages among broker-dealers, customers, and custodian banks regarding the terms of a trade executed for the customer and (2) a central matching service where TFTS will act as an intermediary in the confirmation/affirmation process by comparing a broker-dealer's trade data with a customer's allocation instructions to produce an affirmed confirmation.

The parties to institutional trades use ETC services to transmit electronically the messages (e.g., the institution's allocation instructions to the broker-dealer and the broker-dealer's submission of trade data to the institutional customer) necessary to confirm and affirm the trades. TFTS's ETC service is designed to be used by institutional customers, broker-dealers, and custodian banks to communicate the terms and acknowledgment of their securities trades.⁷

Matching services are a recent development in institutional trade processing. A matching service produces an affirmed confirmation of the trade by independently performing some of the steps in confirming and affirming an institutional trade. It thereby reduces the number of messages that have to be sent among the parties to the trade. TFTS's matching service will compare the broker-dealer's trade data submission to the institution's allocation instructions and will produce an affirmed confirmation of the trade if the two descriptions match.⁸

⁶ Letter from Frank Denaro, Senior Vice President, Salomon Smith Barney (March 5, 1999). The letter is available for inspection and copying in the Commission's Public Reference Room in File No. 600-31.

⁷ The Commission has approved proposed rule changes by the Municipal Securities Rulemaking Board (MSRB), the National Association of Securities Dealers (NASD), and the New York Stock Exchange (NYSE) under which their broker-dealer members are permitted to use ETC services provided by an entity that has received an exemption from clearing agency registration to provide confirmation and affirmation services. Securities Exchange Act Release No. 41378 (May 7, 1999) [File Nos. SR-MSRB-98-06, SR-NASD-98-20, and SR-NYSE-98-07]. Previously, those rules required broker-dealers to use ETC services provided by a registered clearing agency.

⁸ The notice of TFTS's application contains a detailed description of both the confirmation/affirmation process for institutional trades and

¹⁰ The Commission believes that the Exchange should consider requiring a sufficient add-on margin level for all German mark/Japanese yen FCOs to achieve at least a 96% confidence level.

III. Comment Letter

We received one comment letter in response to the notice of filing of TFTS's application.⁹ The commenter generally supported TFTS's application.

The Commenter expressed concern with the scope of TFTS's undertaking to develop fair and reasonable linkages between its matching service and The Depository Trust Company (DTC). Specifically, the commenter stated that vendors may require direct linkages for matching and confirmation services and that it did not want to incur charges to connect with each new vendor. The commenter stated that it believes that broker-dealers and banks that have links to DTC should be able to use those links to communicate with matching and confirmation service providers.

The commenter also noted TFTS's undertaking that it will give us 20 business days' advance notice of any material changes to its matching service. The commenter stated that TFTS, like DTC, should be required to give participants a comment period before making changes to its matching system.

IV. Discussion

A. Statutory Standards

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with us.¹⁰ On April 6, 1998, we issued an interpretive release in which we conclude that an entity that provides matching services as an intermediary between broker-dealers and institutional customers is a clearing agency¹¹ and is subject to the registration requirements of Section 17A(b)(1) (Matching Release).¹² However, Section 17A(b)(1) also states that upon our own motion or upon a clearing agency's application we may conditionally or unconditionally exempt a clearing agency from any provisions of Section 17A or the rules or regulations thereunder if we find that such exemption is consistent with the

TFTS's matching service. Securities Exchange Act Release No. 41003, *supra* note 5.

⁹ Letter from Salomon Smith Barney, *supra* note 6.

¹⁰ 15 U.S.C. 78q-1(b)(1).

¹¹ Section 3(a)(23) of the Exchange Act, 15 U.S.C. 78c(a)(23), defines the term clearing agency as, among other things:

[A]ny person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation securities settlement responsibilities.

¹² Securities Exchange Act Release No. 39829 (April 6, 1998), 64 FR 17943. Specifically the Meeting Release concluded that matching constitutes "comparison of data respecting the term of settlement of securities transactions."

public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. For the reasons set forth below, we believe that an exemption for TFTS from full clearing agency registration is consistent with Section 17A

B. Evaluation of TFTS's Application for Exemption

We have previously granted three conditional exemptions from clearing agency registration.¹³ In those cases, we reviewed the applicants' risk management procedures, operational capacity and safeguards, corporate structure, and ability to comply with the requirements of Section 17A in order to assure that the fundamental goals of that section (*i.e.*, the safety and soundness of the national clearance and settlement system) were furthered.¹⁴

In our consideration of TFTS's application, we noted that the matching service would be the only clearing agency function that TFTS would perform under an exemptive order. In addition, we recognized that while TFTS's matching service could have a significant impact on the national clearance and settlement system, all of the concerns raised by an entity that performs a wider range of clearing agency functions are not raised in TFTS's situation.¹⁵ Also in our review, we took into account that TFTS had represented in its Form CA-1 that it would comply with certain conditions that we would impose under an exemptive order. Therefore, we have decided not to require TFTS to satisfy all of the standards normally required of

¹³ Securities Exchange Act Release Nos. 36573 (December 12, 1995), 60 FR 65076 (order approving applications for exemption from clearing agency registration for the Clearing Corporation for Options and Securities); 38328 (February 24, 1997), 62 FR 9225 (order approving application for exemption from clearing agency registration for Cedel Bank); and 39643 (February 11, 1998) 63 FR 8232 (order approving application for exemption from clearing agency registration by Moran Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System).

¹⁴ Specifically, the applications were considered against standards that the Commission's Division of Market Regulation has published for the evaluation of applications for clearing agency registration. Securities Exchange Act Release No. 16900 (June 17, 1980), FR 45 49102.

¹⁵ TFTS specifically represented that it will not perform other functions of a clearing agency such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market. In addition, in its Form CA-1 TFTS (1) represents that it will not handle funds or securities and (2) states that it will not impose prohibitions or limit access to its service by potential customers but that it might terminate a subscription for failure to pay fees.

registrants under Section 17A.¹⁶ As a result, in addition to considering the public interest and the protection of investors, the primary factor in our consideration of TFTS's application was whether TFTS is so organized and has the capacity to be able to facilitate prompt and accurate matching services.¹⁷

C. Terms of TFTS's Exemption

1. Scope of Exemption

This order grants TFTS an exemption from registration as a clearing agency under Section 17A of the Exchange Act to provide a matching service where it will act as an intermediary in the confirmation/affirmation process to compare a broker-dealer's trade data with a customer's allocation instructions to produce an affirmed confirmation. The exemption is granted subject to conditions that we believe are necessary and appropriate in light of the statutory requirements of the Section 17A objective of promoting a safe and efficient national clearance and settlement system and in light of TFTS's structure and operation. This exemptive order and the conditions and limitations contained in it are consistent with our statement in the Matching Release that an entity that limits its clearing agency functions to providing matching services does not have to be subject to the full range of clearing agency regulation.

2. Conditioning of Exemption

We are including specific conditions in our order exempting TFTS from clearing agency registration. As noted above, these conditions are designed to promote a safe and efficient national clearance and settlement system and to

¹⁶ Accordingly, TFTS will not be subject to the requirements of Section 17A which require a registered clearing agency to:

(1) Fairly represent the clearing agency's shareholders in the selection of the clearing agency's directors. Section 17A(b)(3)(C), 15 U.S.C. 78q-1(b)(3)(C).

(2) Limit the categories of persons that are potentially eligible for clearing agency services. Section 17A(b)(3)(B), 15 U.S.C. 78q-1(b)(3)(B).

(3) Equitably allocate reasonable dues, fees, and other charges among clearing agency participants. Sections 17A(b)(3)(D) and (E), 15 U.S.C. 78q-1(b)(3)(D) and (E).

(4) Enforce compliance by its participants with its rules. Sections 17A(b)(3)(A), (G) and (H), 15 U.S.C. 78q-1(b)(3)(A), (G) and (H). Because we are granting TFTS an exemption from clearing agency registration, TFTS will not be a self-regulatory organization and therefore will not be required to file rule changes in accordance with Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b). Furthermore, we are not requiring TFTS to comply with the rule change filing requirements of section 19(b) as a condition of its exemption.

¹⁷ See Section 17A(b)(3)(A) of the Exchange Act, 15 U.S.C. 78q-1(b)(3)(A).

enable us to monitor the operation of TFTS's matching service.

1. Before beginning the commercial operation of its central matching service, TFTS must provide us with an audit report that addresses all the areas discussed in our Automation Review Policies (ARPs).¹⁸ In order to verify that TFTS is organized and has the capacity to be able to facilitate prompt and accurate matching services, the exemption contained in this order will take effect thirty days after our staff has received an acceptable audit report pursuant to this condition.

2. TFTS must provide the Commission (beginning in the central matching service's second year of operation) with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARPs.

3. TFTS must provide the Commission with twenty business days' advance notice of any material changes that TFTS makes to its matching service. These changes will not require our approval before they are implemented.¹⁹

4. TFTS must provide the Commission with prompt notification of systems outages lasting more than thirty minutes.

5. TFTS must respond to requests from the Commission for additional information relating to its matching service and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service. The requests for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's operations and compliance with the federal securities laws and the terms and conditions of TFTS's exemptive order.

¹⁸ Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703; and 29185 (May 9, 1991), 56 FR 22490. In addition, Form CA-1 requires applicants to attach its most recent balance sheet and statement of income and expenses. TFTS did not include this information with its Form CA-1 but represented in its Form CA-1 that it will provide us with a current balance sheet and income statement before beginning operations.

¹⁹ While the commenter expressed concern with this condition, we believe that receiving advance notice of material changes to TFTS's matching service is sufficient for the purposes of this exemption. TFTS must file with the Commission a request to modify this order if it makes any changes in its operations as summarized in this order, in its Form CA-1, dated January 11, 1999, or in any subsequently filed amended Form CA-1, that would change the fundamental nature of its matching service.

6. TFTS must supply the Commission or its designee with periodic reports regarding the affirmation rates for depository-eligible transactions that settle in the United States effected by institutions that utilize TFTS's matching service.²⁰

7. TFTS must preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, reports regarding affirmation rates that are sent to the Commission or its designee, and any compliant received from a customer, all of which pertain to the operation of TFTS's matching service.²¹ TFTS must retain these records for a period of not less than five years, the first two years in an easily accessible place.

8. TFTS must develop fair and reasonable linkages between the matching service and DTC and other central matching services that are regulated by the Commission or that receive an exemption from clearing agency registration from the Commission. At this time, we are not specifying the type of linkages that TFTS must develop. Our staff will consult with TFTS and industry participants to ensure that appropriate linkages are developed in a timely fashion. However, we believe that at a minimum the linkages should allow parties to trades that are processed through one or more matching services to communicate through one or more appropriate and effective interfaces with clearing agencies and other matching services. For example, a broker-dealer that has a link to DTC should be able to transmit trade data through that link to an institutional customer that uses TFTS's services without having to establish a separate link with TFTS.

3. Modification of Exemption

The Commission may modify by order the terms, scope, or conditions of TFTS's exemption from registration as a clearing agency if we determine that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Furthermore, we may limit, suspend, or revoke this exemption if we find that TFTS has violated or is unable to comply with any of the provisions set forth in this order if such

²⁰ For purposes of this condition, we designate DTC as agent for receipt of the periodic reports.

²¹ All electronic messages that are sent through TFTS's systems will originate at the sender's (i.e., the broker-dealer's or the customer's) computer terminal and will be routed through TFTS's data center. TFTS's data center will copy and store the data that passes through it.

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act

V. Conclusion

Pending the receipt of TFTS's initial audit report, we believe that TFTS will have sufficient operational and processing capability to facilitate prompt and accurate matching services. In particular, we note that TFTS's exemption will be subject to conditions that are designed to enable us to monitor TFTS's operational and processing capability with respect to its matching service. Therefore, the Commission finds that TFTS's application for exemption from registration as a clearing agency meets the standards and requirements deemed appropriate for such an exemption.

It is therefore ordered, pursuant to Section 19(a)(1) of the Exchange Act, that the request for exemption from registration as a clearing agency filed by Thomson Financial Technology Services, Inc. (File No. 600-31) be, and hereby is, granted subject to the conditions contained in this order.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-12138 Filed 5-12-99; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS—1

Title: The Selective Service System Registration Form.

Need and/or Use: Is used to register men and establish a data base for use in identifying manpower to the military services during a national emergency..

Respondents: All 18-year-old males who are United States citizens and those male immigrants residing in the United States at the time of their 18th birthday are required to register with the Selective Service System.

Frequency: Registration with the Selective Service System is a one-time occurrence.

Burden: A burden of 2 minutes or less on the individual respondent.

Copies of the above identified forms can be obtained upon written request to: Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

Written comments and recommendations for the proposed extension of clearance of the forms should be sent within 30 days of publication of this notice, to: Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

A copy of the comments should be sent to: Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: May 7, 1999.

Gil Coronado,
Director.

[FR Doc. 99-12130 Filed 5-12-99; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF STATE

[Public Notice # 3035]

Advisory Committee on Religious Freedom Abroad Final Meeting; Public Meeting Notice

Pursuant to the Federal Advisory Committee Act, the Department of State announces a meeting of the Secretary of State's Advisory Committee on Religious Freedom Abroad on Monday, May 17, 1999, at 2:30 p.m., in room 1107 at the U.S. Department of State, 2201 C Street, NW, Washington, DC. We apologize for the unavoidable short notice due to scheduling conflicts of key participants.

The purpose of the meeting will be to adopt the final report, present it to the Secretary of State, and conclude the work of the Committee.

This meeting is open to members of the public up to the seating capacity of the room (directions available upon lobby check-in). Admittance to the State Department building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, organization, social security number, date of birth, and citizenship to Ms. Kim Mallory by fax at (202) 647-4501 or by telephone at (202) 647-1422.

All attendees must use the "C" Street entrance. One of the following valid ID's will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information contact Ms. Alexandra Arriaga, Executive Secretary of the Advisory Committee by fax at (202) 647-4501 or by telephone at (202) 647-1422.

Dated: May 10, 1999.

Alexandra Arriaga,

Executive Secretary, Advisory Committee on Religious Freedom Abroad.

[FR Doc. 99-12133 Filed 5-10-99; 2:24 pm]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Meeting of the Land Between The Lakes Advisory Committee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Committee (LBLAC) will hold its first meeting to consider various matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The meeting agenda includes the following:

- (1) Welcome and Introductions
- (2) Federal Advisory Committee Guidelines
- (3) Committee Charter, Bylaws and Operating Procedures
- (4) Land Between The Lakes Overview
- (5) 1999 Meeting Issues and Dates
- (6) Committee Travel Reimbursement Guidelines

The meeting is open to the public; however, due to the length of the scheduled agenda, there will not be an opportunity for oral statements from the public at the meeting. Written comments are invited and may be mailed to Ann W. Wright, General Manager, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Future meetings will provide opportunities for oral comment. **DATES:** The meeting will be held on June 2, 1999, from 8:30 a.m. to 3:30 p.m., CDT.

ADDRESSES: The meeting will be held at Kenlake State Park Lodge, Meeting Room A, Aurora, Kentucky, and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Kathy Coursey, LBLAC Administrative Officer, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270/924-2272.

SUPPLEMENTARY INFORMATION: Members of the LBLAC and their appointing agencies are:

Mr. Lee Anderson, TVA
Dr. Cem Basman, TVA (Committee Chairperson)

Mr. Tom Bennett, Kentucky Department of Fish and Wildlife Resources
Dr. Edward Clebsch, TVA
Mr. Reed Conder, Governor of Kentucky
Mr. Ron Fox, Tennessee Wildlife Resources Agency
Mr. Ben Hall, TVA
Mr. Donnie Holland, Trigg County, Kentucky, Judge Executive
Mr. J.D. Lee, Lyon County, Kentucky, Judge Executive
Ms. Dortha Lyons, Governor of Kentucky
Mr. Jesse Mayo, Governor of Tennessee
Ms. Della Oliver, Lyon County, Kentucky, Judge Executive
Dr. Phillip Rea, TVA
Mr. Jesse Thomas, Trigg County, Kentucky, Judge Executive
Mr. David Wallace, Stewart County, Tennessee, Executive
Mr. Nick Watson, Stewart County, Tennessee, Executive
Ms. Ramay Winchester, Governor of Tennessee

Dated: May 7, 1999.

Ann W. Wright,

General Manager, TVA's Land Between The Lakes.

[FR Doc. 99-12119 Filed 5-12-99; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 20-XX-31, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 20-XX-31, and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 20-XX-31, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines. This AC presents information regarding the inspection, maintenance, and installation of engine controls with emphasis on the airframe portion of these systems. It provides guidance to design and maintenance personnel to reduce the number of airplane accidents and incidents related to the loss of engine power control. This AC provides a supplement, but does not replace the procedures in the manufacturers' maintenance manuals. This material is neither mandatory nor regulatory in nature and does not constitute regulation.

DATES: Comments must be received on or before July 12, 1999.

ADDRESSES: Send all comments on the proposed AC to Federal Aviation Administration, Small Airplane Directorate, Regulations and Policy Branch (ACE-111), 601 East 12th Street, Kansas City, MO 64106. You may also submit comments on the internet to: terre.flynn@faa.gov.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone (781) 238-7164.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of this proposed AC by either contacting the person named above under the **FOR FURTHER INFORMATION CONTACT** section or on the internet at: <http://www.faa.gov/avr/air/airhome.htm>. We invite interested parties to submit your comments by electronic mail to the **ADDRESSES** section specified above. Commenters must identify the AC title and number when submitting any comments. The FAA will consider all communication received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), Suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

A review of service history on engine control installations indicates that 75 percent of the problems with these systems result from lack of proper maintenance of airplane manufacturer installed engine controls. The other 25 percent of the service problems originate from a lack of maintenance of the engine manufacturers' throttle, mixture, and propeller governor levers/linkages. Most airplane or engine maintenance manuals lack detailed information on inspection and installation of engine controls.

Issued in Kansas City, Missouri, on May 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-12058 Filed 5-12-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99-02-U-00-CBE) To Use the Revenue From a Passenger Facility Charge (PFC) at Greater Cumberland Regional Airport, Wiley Ford, WV

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Greater Cumberland Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 14, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Arthur Winder, Project Manager, Washington Airports District Office, PO Box 15780, Washington, DC 20041-6780.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to James G. Stahl, Chairman, of the Potomac Highlands Airport Authority at the following address: Greater Cumberland Regional Airport, Route 1, Post Office Box 99, Wiley Ford, WV 26767.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Potomac Highlands Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Program Manager, Washington Airport District Office, PO Box 16780, Washington, DC (703) 661-1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Greater Cumberland Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 4, 1999, the FAA determined that the application to use the revenue from a PFC submitted by Potomac Highlands Airport Authority was

substantially complete within the requirements of § 158.25 part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 19, 1999.

The following is a brief overview of the application.

PFC Application No: 99-02-U-00-CBE.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: July 1, 1994.

Proposed charge expiration date: July 1, 1994.

Total estimated PFC revenue: \$150,000.

Brief description of proposed project(s): Rehabilitate runway 5-23—Phase I (Preliminary Design Only).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Cumberland Regional Airport.

Issued in Washington, DC 20041-6780, May 4, 1999.

Terry J. Pager,

Manager, Washington Airports District Office.

[FR Doc. 99-12142 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-13-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities: Proposed Collection; Comment Request—FRA F 6180.71, U.S. DOT AAR Crossing Inventory Form

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, this notice invites the general public, railroads, and other public agencies to comment on the proposed information collection of FRA F 6180.71, U.S. DOT-AAR Crossing Inventory Form.

DATES: Comments must be received no later than July 12, 1999.

ADDRESSES: Comments are invited on: (a) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (b) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (c) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (d) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). Comments may be sent to: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130-0017. Alternatively, comments may be transmitted via facsimile to (202) 493-6265 or (202) 493-6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Mr. Robert Brogan, (202) 493-6292 or Dian Deal, (202) 493-6292. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR §§ 1320.8(d)(1), 1320.10(e)(1), 1320.12(a).

Below is a brief summary of the currently approved information collection activity that FRA will submit for clearance by OMB as required under the PRA:

Title: U.S. DOT—AAR Crossing Inventory Form.

OMB Control Number: 2130-0017.

Form Number: FRA F 6180.71.

Expiration: March 31, 2000.

Type of Request: Revision of a currently approved collection.

Abstract: Form FRA 6180.71 is a voluntary form and is being revised to include additional data elements at the request of states and railroads. The form is also being revised to fulfill National Transportation Safety Board (NTSB) recommendations and to take advantage of recent advances in information technology. The form is used by States and railroads to periodically update certain cite specific highway-rail crossing information which is then transmitted to FRA for input into the National Inventory File. This information has been collected on the U.S. DOT—AAR Crossing Inventory Form since 1974 and maintained in the National Inventory File database since 1975. The primary purpose of the National Inventory is to provide for the existence of a uniform database which can be merged with accident data and used to analyze information for planning and implementation of crossing safety improvement programs by public, private, and governmental agencies responsible for highway-rail crossing safety. Following the official establishment of the National Inventory in 1975, the Federal Railroad Administration (FRA) assumed the principal responsibility as custodian for the maintenance and continued development of the U.S. DOT/AAR National Highway-Rail Crossing Inventory Program. The major goal of the Program is to provide federal, state, and local governments, as well as the railroad industry, information for the improvement of safety at highway-rail crossings. Good management practices necessitate maintaining the database with current information. The data will continue to be useful only if maintained and updated as inventory changes occur. FRA previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) clearance number 2130-0017. OMB approved the burden in the original form through March 31, 2000. Based on the most recent information available, FRA estimates 62,000 updates per year. This is a substantial reduction in updates from the previous estimate of responses and represents a corresponding reduction of

1,473 hours in the reporting and recordkeeping burden. The reduction in responses is due to a lower response rate from states and railroads over the past few years and the expected continuation of this trend. FRA is requesting a three-year approval from OMB for this information collection.

Affected Public: Railroads and State governments.

Estimated Total Number of Responses Per Year: 62,000 updates.

Estimated Response Time per Form: .25 hr. (8,000 form updates); .50 hr. per mass update list (337 mass update lists containing 24,000 updates); .03333 hr. per GX computer update (30,000 updates on 36 GX computer disks).

Total Annual Burden: 3,169 hours

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501-3520.

Issued in Washington, D.C. on May 6, 1999.

M. Johnson,

Information Technology Manager, Office of Information Technology and Support Systems, Federal Railroad Administration.
[FR Doc. 99-12049 Filed 5-12-99; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33716]

Georgia & Florida RailNet, Inc.— Acquisition and Operation Exemption—Lines of Gulf & Ohio Railways, Inc.

Georgia & Florida RailNet, Inc. (GFRN), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire (by purchase or acquisition of a lease interest) and operate approximately 256.37 miles of rail lines operated by and either owned by, or under the control of, Gulf & Ohio Railways, Inc. (GOR).¹ The lines to be acquired through purchase by GFRN are as follows: (1) The Albany Bridge, a line of railroad approximately 3,470 feet in length, extending across a bridge in Albany, GA, from track chaining station 5473+20 to track chaining station 5438+50; (2) the Adel-Foley Line, from milepost GB-1.0 at Adel, GA, to

¹ GFRN indicates that some rail lines are owned and operated by GOR, while GOR operates and possesses a leasehold interest in other rail lines.

milepost GB-77.3 at Perry, FL, and from milepost GB-77.3/LO-45.75 at Perry, FL, to milepost LO-39.0 at Foley, FL; (3) the Valdosta-Nashville Line, from milepost 30.65 at Valdosta, GA, to milepost 57.2 at Nashville, GA; (4) the Moultrie-Schley Junction Line, from milepost 27.1 at Moultrie, GA, to milepost 33.6 at Schley Junction, GA; (5) the Norman Junction Line, from milepost 29.52 at Norman Junction, GA, to milepost 33.52 at Moultrie, GA; and (6) the Thomasville-Camilla Line, from milepost ANC-692.08 at Thomasville, GA, to milepost ANC-728.0 at Camilla, GA.²

In addition, GFRN will also acquire GOR's lease interest in, and operate, the following rail lines: (1) The Albany-Sparks Line, (owned by and leased from the Norfolk Southern Railway (NSR)) from milepost GN-0.7 at Albany, GA, to milepost GN-58.9 at Sparks, GA; (2) the Camilla-Albany Line (owned by and leased from CSX Transportation, Inc. (CSX)) from milepost ANC-728.0 at Camilla, GA, to milepost ANC-748.03 at Albany, GA; and (3) the Albany-Sylvester Line (owned by and leased from CSX) from milepost AP-699.12 at Albany, GA, to milepost AP-677.67 at Sylvester, GA.

GFRN will also acquire incidental overhead trackage rights over approximately 29.8 miles of rail line owned by the Georgia Southern and Florida Railway Company (a subsidiary of NSR) from milepost 125.2-G at Sparks, GA, to milepost 155.0-G (at a connection into NS' Valdosta yard facilities) at Valdosta, GA.

The transaction was scheduled to be consummated on or shortly after April 30, 1999.

This transaction is related to STB Finance Docket No. 33717, *North American RailNet, Inc.—Continuance in Control Exemption—Georgia & Florida RailNet, Inc.*, wherein North American RailNet, Inc., is seeking an exemption to continue in control of GFRN upon its becoming a Class III rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

² GFRN states that its projected revenues will not exceed those that would qualify it as a Class III rail carrier.

Because its projected revenues will exceed \$5 million, however, GFRN certified to the Board, on February 12, 1999, that it had served a copy of the notice on the national offices of the labor unions with employees on the affected lines, and that the required notice of its acquisition has been posted at the workplace of the employees on the affected lines. See 49 CFR 1150.32(e).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33717, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross, & Auchincloss, 1707 L Street, NW, Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 5, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99-11995 Filed 5-12-99; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33717]

North American RailNet, Inc.—Continuance in Control Exemption—Georgia & Florida RailNet, Inc.

North American RailNet, Inc. (NARN), has filed a notice of exemption to continue in control of Georgia & Florida RailNet, Inc. (GFRN), upon GFRN's becoming a Class III railroad.

The transaction was scheduled to be consummated on or shortly after April 30, 1999.

This transaction is related to STB Finance Docket No. 33716, *Georgia & Florida RailNet, Inc.—Acquisition and Operation Exemption—Lines of the Gulf & Ohio Railways Inc.*, wherein GFRN is seeking an exemption to acquire and operate certain rail lines currently operated by and owned by, or under the control of, Gulf & Ohio Railways, Inc.

NARN controls four existing Class III railroads: Nebraska, Kansas & Colorado RailNet, Inc., operating in Nebraska, Kansas, and Colorado; Illinois RailNet, Inc., operating in Illinois; Camas Prairie RailNet, Inc., operating in Washington and Idaho; and Mississippi & Tennessee RailNet, Inc., operating in Mississippi and Tennessee.

NARN states that: (i) The rail lines operated by GFRN do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect GFRN's lines with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval

requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33717, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross, & Auchincloss, 1707 L Street, NW, Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 5, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99-11994 Filed 5-12-99; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33729 (Sub-No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33729¹ to permit the trackage rights to

¹ On March 19, 1999, Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway

expire on July 31, 1999, in accordance with the agreement of the parties.

DATES: This exemption will be effective on June 12, 1999. Petitions to reopen must be filed by June 2, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33729 (Sub-No. 1) must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of all pleadings must be served on petitioner's representative Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565-1600. [TDD for the hearing impaired (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 289-4357. [Assistance for the hearing impaired is available through TDD services (202) 565-1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 6, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,
Secretary.

[FR Doc. 99-12113 Filed 5-12-99; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 5, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to

Company (BNSF) to grant temporary overhead trackage rights to UP over 350.4 miles of BNSF's rail line between (1) Rockview Junction, MO, BNSF milepost 141.7 (River Subdivision), and Jonesboro, AR, BNSF milepost 420.0 (Thayer South Subdivision), via Turrell, AR, BNSF milepost 282.3 (River Subdivision), and (2) Rockview Junction, MO, BNSF milepost 141.7 (River Subdivision), and KC Junction, TN, BNSF milepost 486.0 (Thayer South Subdivision). See *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33729 (STB served Apr. 8, 1999). The trackage rights agreement is scheduled to expire July 31, 1999. The trackage rights operations under the exemption became effective on April 1, 1999, and are subject to standard labor protective conditions.

OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1381.

Regulation Project Number: CO-49-88 Final.

Type of Review: Extension.

Title: Limitations on Corporate Net Operating Loss.

Description: This regulation provides rules for the allocation of a loss corporation's taxable income or net operating loss between the periods before and after an ownership change under section 382 of the Code, including an election to make the allocation based on a closing of the books as of the change date.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per

Respondent: 6 minutes.

Frequency of Response: On occasion, Other (when needed).

Estimated Total Reporting Burden: 200 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.
[FR Doc. 99-12111 Filed 5-12-99; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 7, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1005.

Regulation Project Number: PS-62-87 Final.

Type of Review: Extension.

Title: Low-Income Housing Credit for Federally-Assisted Buildings.

Description: The rule requires the taxpayer (low-income building owner) to seek a waiver in writing from the IRS concerning low-income building acquired during a special 10-year period in order to avert a claim against a Federal mortgage insurance fund.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per

Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1545-1385.

Regulation Project Number: GL-238-88 Final.

Type of Review: Extension.

Title: Preparer Penalties—Manual Signature Requirement.

Description: The reporting requirements affect returns preparers of fiduciary returns. They will be required to submit a list of the names and identifying numbers of all fiduciary returns which are being filed with a facsimile signature of the returns preparer.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 20,000.

Estimated Burden Hours Per

Respondent/Recordkeeper: 1 hour, 17 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 25,825 hours.

OMB Number: 1545-1486.

Regulation Project Number: REG-209793-95 Final.

Type of Review: Extension.

Title: Simplification of Entity Classification Rules.

Description: These rules allow certain unincorporated business organizations to elect to be treated as corporations or partnerships for federal tax purposes. The information collected on the election will be used to verify the classification of electing organizations.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per

Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99-12112 Filed 5-12-99; 8:45 am]

BILLING CODE 4830-01-U

UNITED STATES INFORMATION AGENCY

Secondary School Civic Education Curriculum Development Project for Azerbaijan; Request for Proposals.

SUMMARY: The Advising, Teaching, and Specialized Programs Division of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for a Secondary School Civic Education Curriculum Development Project for Azerbaijan. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to cooperate with USIA in the administration of a two-year project to support the development and utilization of new curriculum units for a civic education course entitled "Man and Society" for students in the tenth and eleventh grades in Azerbaijan. The grant will award up to \$250,000 to facilitate the project.

The grantee will work with the Azerbaijani Ministry of Education, Department of Curriculum Development and Educational Reform, which is the office of the Government of Azerbaijan directly responsible for national education and teacher training issues. The program will comprise three phases: (1) Preliminary consultations in Baku with a curriculum development

team of Azerbaijani educators; (2) a three-month U.S.-based curriculum development workshop in which the team will produce draft curriculum units; (3) follow-up consultations in Azerbaijan to assist with the training of a larger group of Azerbaijani practitioners in the review and field-testing of the draft curriculum units. Upon the successful completion of Phases I-III, additional funds may be available to the grantee organization for a fourth phase of activity to cooperate with the Ministry of Education of Azerbaijan, Department of Curriculum Development and Educational Reform, and the Azerbaijani curriculum development team to further review and revise the draft materials as needed and to provide broader training of Azerbaijani teachers and administrators for utilization of the revised curriculum units in Azerbaijani classrooms.

USIA solicits detailed proposals from U.S. educational institutions and public and private non-profit organizations to develop and administer this project. Grantee organizations will consult regularly with USIA and with USIA's office in Azerbaijan (the U.S. Information Service in Baku) with regard to participant selection, program implementation, direction, and assessment. Proposals should demonstrate an understanding of the issues confronting education in Azerbaijan as well as expertise in civic education and curriculum development.

The funding authority for the program cited above is provided through the Freedom Support Act as well as USIA's base budget. Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Program Information

Overview: The goal of the project is to assist the Ministry of Education, Department of Curriculum Development and Educational Reform in Baku, Azerbaijan, to develop up-to-date curriculum units to be taught at the tenth and eleventh grade levels and to assist in training teachers for the utilization of these units. The rationale for this project is that improving citizenship education at the secondary school level will better prepare Azerbaijani students to participate actively in building a pluralistic, democratic society, and will promote democratic relations among members of the school community, including students, teachers, school administrators, and parents. Applicants may suggest topics to be developed by the Azerbaijani curriculum team in their

proposals; however, final determination of appropriate topics will be made by the curriculum development team and the Ministry in cooperation with the grantee organization during the first phase of the project.

Guidelines

Program Planning and Implementation

Grants should begin on or around September 1, 1999, with Phase I of the project, in which a curriculum development team of six practitioners (e.g., classroom teachers, curriculum specialists, and a Ministry official who will serve as the project director) will be selected by a Ministry-led selection committee in Azerbaijan in consultation with the U.S. grantee organization and the U.S. Information Service (USIS) in Baku. In Phase I, the team will undertake preliminary work in Baku over a period of 3-6 months. Members of the curriculum development team, in consultation with a specialist from the grantee organization and the Azerbaijani Project Director, will familiarize themselves with civics curricula and teaching materials used in the U.S. and will select the topics to be explored in the draft curriculum units.

In Phase II, members of the curriculum development team will spend approximately three months in a highly structured U.S.-based workshop to be sponsored and organized by the U.S. grantee organization, and will attend focused curriculum seminars, observe relevant aspects of the U.S. educational system, and draft teacher and student materials for the curriculum units in consultation with U.S. specialists. The grantee organization will be responsible for introducing the Azerbaijani team to leading U.S. civic educators with expertise that is pertinent to the topics to be explored, and to a broad range of relevant resources. The workshop schedule should incorporate time for both individual and group work on materials as well as intensive training on specific approaches to the teaching of civic education topics. In addition, the workshop should include field experiences which are relevant to the materials being produced (such as visits to schools and professional association meetings).

In Phase III, the curriculum development team will work in Azerbaijan with Azerbaijani teacher trainers, Ministry of Education officials and U.S. specialists from the grantee organization and other U.S. organizations to provide introductory training for a larger group of practitioners in methods for testing and

utilizing the draft curriculum units in the civics classroom. During this phase the Ministry of Education (MOE) will provide the following assistance to the U.S. grantee:

(1) Facilitate the logistics of in-service training sessions for teachers by providing appropriate space;

(2) Assist in the selection of pilot schools and teachers;

(3) provide leave time/leaves of absence for the curriculum development team and Project Director during their stays in the U.S. and the subsequent in-service training work;

(4) Provide appropriate office space and facilities to house both the civic education reference collection and the materials produced by the curriculum development team.

Visa/Insurance/Tax Requirements

U.S. lecturers and consultants participating in the project must be U.S. citizens. Programs must comply with J-1 visa regulations. Please refer to Program Specific Guidelines (POGI) in the Solicitation Package for further information. Administration of the program must be in compliance with reporting and withhold regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to \$60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed \$250,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program year, component, phase, location, or activity to provide clarification. The total administrative costs funded by USIA must be limited and reasonable.

Allowable costs for the program include the following:

(1) Administrative Costs, including salaries and benefits, of grantee organization.

(2) Program Costs, including general program costs and program costs for each Azerbaijani participant in the U.S.-based curriculum development seminar. Also included are program costs associated with the field-testing of materials in Azerbaijan and with the initial training of Azerbaijani teachers.

Please refer to the Solicitation Package (POGI and PSI) for complete budget guidelines and formatting instructions.

ANNOUNCEMENT TITLE AND NUMBER: All correspondence with USIA concerning this RFP should reference the above title and number E/ASU-99-16.

FOR FURTHER INFORMATION, CONTACT: The Office of Academic Programs, Advising, Teaching and Specialized Programs Division, Specialized Programs Branch, E/ASU, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone number 202-619-4568 and fax number 202-401-1433, e-mail address jceriale@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Jennifer K. Cerialo on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at <http://e.usia.gov/education/rfps>. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401-7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, July 19, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU-99-

16, Office of Grants Management, E/X., Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these file electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately

process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at <http://www.itpolicy.gsa.gov>.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as by the USIA Office of East European and NIS Affairs and the USIA post overseas. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, relevance to the Agency's mission, and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise in civic education.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity.

Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity and Record/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) to ensure ongoing involvement with Azerbaijani curriculum development projects.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The progress of the grant should be monitored closely. The USIA Program Officer should be kept informed of the implementation of each phase of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposals, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should minimize cost-sharing through other private sector support as well as institutional direct funding contributions.

10. *Value to U.S.-Partner Country Relations:* Proposed projects should demonstrate the need, potential impact, and significance of the project in the partner country.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to

increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: May 5, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99-11974 Filed 5-12-99; 8:45 am]

BILLING CODE 8230-01-M

UNITED STATES INFORMATION AGENCY

Teaching Excellence Awards Program

NOTICE: Request for proposals.

SUMMARY: The Division for the NIS Secondary School Initiative, Office of Citizen Exchanges, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the Teaching Excellence Awards (TEA) program. Public and private non-profit organizations meeting the provisions

described in IRS regulation 26 CFR 1.501(c) may submit proposals for the fourth year of a program of recognition for excellence in the fields of English and American studies at the primary and secondary levels of education in Russia, Ukraine, Kazakhstan, Kyrgyzstan, and Uzbekistan. The total amount of funding available for this program is \$2,250,000.

Program Information

Overview: The objective of the program is to select exemplary teachers in the five target countries through a merit-based competition and provide modest awards to them and their schools. The top national winners participate in a summer enrichment program in the U.S. The goals are to: give recognition to excellence in the teaching of English and American studies; promote innovation in teaching methodology in the New Independent States (NIS) of the former Soviet Union; and promote mutual understanding about the societies and educational systems of the U.S. and the five target NIS countries.

Background: The program was established in 1996 and has been administered for the past three years by the American Councils for International Education (ACIE). For the 1996–1997 program year, the teacher competition was conducted in Russia and Ukraine, and 900 educators were nominated, for which their schools received plaques. The competition culminated in the selection of 225 Russian and 75 Ukrainian regional winners of awards—\$200 worth of education materials for the teachers and \$2,000 worth of education equipment for the schools. Thirty Russian and 15 Ukrainian educators were selected as national winners and participated in a seven-week enrichment program in the U.S. Twenty American teachers were also selected from national excellence competitions who interacted with the NIS teachers and traveled to their countries for two-week programs. The program was repeated in 1997–1998 and expanded in 1998–1999 to include Kazakhstan, Kyrgyzstan, and Uzbekistan.

Guidelines: The organization that is awarded the grant to administer this program must have an infrastructure of offices in the five countries with staff in place year-round under the direct supervision of an American national. The organization must have the ability to work closely with ministries of education and local educational and governmental authorities. The competition must be conducted as a high-profile, merit-based process that

encompasses all oblasts (regions) where it is feasible to elicit nominations. The competition should be broadly advertised to ensure that the maximum number possible of teachers and schools are made aware of it. In Russia nominations will be made primarily by committees of oblast ministry of education officials operating under detailed instructions from the grantee organization in conjunction with USIS Moscow. In the other four countries, applications will be submitted directly to the grantee, which will assemble screening committees of specialists. The awards for regional winners should include a range of educational materials and equipment such as copiers, fax machines and computers, which will be for use by the winner's school. The grantee should arrange for a six-to-seven week enrichment program in the U.S. for the national winners designed to enhance teaching methodologies in English as a foreign language and American studies. The grantee must recruit American educators from state and national teaching excellence competitions to participate in aspects of the summer enrichment program and travel to the NIS for two-to-three week programs based in the schools of the NIS national winners. Close collaboration with USIS and American Embassy officers and American English teaching specialists is required. The competition should be conducted in the fall of 1999; awards should be made in the spring of 2000; the enrichment program should take place in the summer of 2000; the American participants should travel to the NIS in the fall of 2000. Grant activities may begin on August 1, 1999. The grantee is responsible for conducting all activities directly or under sub-contracts.

Programs must comply with J-1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

One grant will be awarded for the whole program. Organizations with less than four years of experience in conducting international exchange and/or training programs with the NIS are not eligible for this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. The itemized budget should clearly show costs for each program component, phase, location, or activity.

Proposals should obey these specific maximum limits for each country: Kazakhstan, \$300,000; Kyrgyzstan,

\$150,000; Russia, \$1,000,000; Ukraine, \$500,000; Uzbekistan, \$300,000.

Allowable costs for the program include the following: the competition itself, awards of material or equipment (valued at \$200 per regional winner, \$2,000 per school), the summer enrichment program, the US teachers to the NIS, and reasonable administrative costs. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number. All correspondence with USIA concerning this RFP should reference the above title and number E/PY-99-48.

FOR FURTHER INFORMATION CONTACT: Robert Persiko, the NIS Secondary School Initiative (E/PY), Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone 202-619-6299, fax 202-619-5311—rpersiko@usia.gov—to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at <http://e.usia.gov/education/rfps>. Please read all information before downloading.

To Receive a Solicitation Package Via FAX on Demand

The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401-7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on June 14, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to: U.S.

Information Agency, Ref.: E/PY-99-48, Office of Grants Management, E/XE, Room 568, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K complaint systems including hardware, software, and firmware. Systems must accurately

process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at <http://www.itpolicy.gsa.gov>.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIS posts in the five countries. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency's goals as outlined above.
2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be expressed in terms that are quantifiable, measurable, and achievable. Proposals should clearly demonstrate how the institution will meet the program's stated objectives.
4. *Multiplier effect/impact:* The proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration

(selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program activities, resources materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to implement the program efficiently and effectively.

7. *Institution's Record/Ability:* Proposal should demonstrate an institutional record of relevant successful exchange activities with the NIS, as well as responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposal should provide a plan for maintaining contact with program alumni, as well as facilitating their ongoing interaction with each other.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success in terms of achieving the stated objectives, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit quarterly program and financial reports.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposals will be assessed by USIA's geographic area office and officers and USIS missions in the five countries in terms of the adequacy of program plan and the organization's NIS infrastructure to achieve TEA's objectives.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between

the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation. Funds for this program are made available under the Foreign

Operations appropriation for fiscal year 1999.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the

availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: May 3, 1999.

Judith S. Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99-11975 Filed 5-12-99; 8:45 am]

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Thursday
May 13, 1999

Part II

Environmental Protection Agency

40 CFR Parts 141, 142, and 143

National Primary Drinking Water
Regulations: Public Notification Rule;
Proposed Rule

Public Notification Handbook—Draft for
Comment; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141, 142, and 143

[FRL-6334-8]

RIN 2040-AD06

National Primary Drinking Water Regulations: Public Notification Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the general public notification regulations for public water systems to implement the public notification requirements of the 1996 Safe Drinking Water Act (SDWA) amendments. The regulations set the requirements that public water systems must follow regarding the form, manner, frequency, and content of the public notice. Public notice of violations is an integral part of the public health protection and consumer right-to-know provisions of the 1996 SDWA amendments. The public notification requirements apply to owners and operators of public water systems which: fail to comply with the requirements of the National Primary Drinking Water Regulations (NPDWR); have a variance or exemption from the drinking water regulations; or are facing other situations posing risk to public health.

In addition, EPA is proposing to revise the State implementation regulations allowing a State, by rule, to establish alternative public notification requirements with respect to the form and content of the notice. Finally, EPA is proposing to consolidate in a single subpart of the Code of Federal Regulations (CFR) all the public notification requirements for public water systems.

DATES: Written comments on this proposed rule must be received by EPA on or before July 12, 1999. EPA will hold two public meetings on the proposal:

1. May 26, 1999, 9:00 a.m., Madison, Wisconsin.
2. June 3, 1999, 10:00 a.m., Washington, D.C.

ADDRESSES: Please send written comments on this proposed rule to the Public Notification Rule Comment Clerk (docket #W-98-19), Water Docket (MC-4101); U.S. Environmental Protection Agency; 401 M Street, S.W., Washington, DC, 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, S.W., Room EB 57; Washington, D.C., 20460.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as a WP 5/6/7/8 file or an ASCII file, avoiding the use of special characters and form and encryption. Electronic comments must be identified by the docket number (W-98-19). Comments and data will also be accepted on disks in WP 5/6/7/8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The public meetings will take place in the following locations: Madison, Wisconsin—Best Western Inn at the Park; 22 S. Carroll Street; Madison, Wisconsin 53703. Washington, D.C.—U.S. EPA Waterside Mall; North Conference Center Room 1; 401 M Street, S.W.; Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426-4791 for general information about the public notification regulations and to register for the public meetings and request copies of this document. For technical inquiries, contact Carl B. Reeverts at (202) 260-7273.

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Regulated Entities. Entities potentially regulated by this action are public water systems (PWS). The following table provides examples of the regulated entities under this rule. A public water system, as defined by section 1401 of SDWA, is "a system for the provision of

water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service

connections or regularly serves at least twenty-five individuals." EPA defines "regularly served" as sixty or more days

per year. EPA has an inventory totaling over 170,000 public water systems nationwide.

TABLE OF REGULATED ENTITIES

Category	Examples of regulated entities
State/Local/Tribal governments	Publicly-owned PWSs, such as municipalities; county governments, water districts, water and sewer authorities, state governments, and other publicly-owned entities that deliver drinking water as an adjunct to their primary business (e.g., schools, State parks, roadside rest stops).
Industry	Privately-owned PWSs, such as private utilities, homeowner associations, and other privately-owned entities that deliver drinking water as an adjunct to their primary business (e.g., trailer parks, factories, retirement homes, day care centers).
Federal government	Federally-owned PWSs, such as water systems on military bases.

The table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.201 of the rule. If you have questions regarding the applicability of this section to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Additional Information for Commenters. Please send an original and three copies of your comments and enclosures (including references) to Public Notification Rule (docket #W-98-19) Comment Clerk, Water Docket (MC 4101), U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460. Comments must be received or post-marked by midnight July 12, 1999.

To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that comments cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Comments should use a separate paragraph for each issue discussed. The record for this rulemaking has been established under docket number W-98-19, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB 57, U.S. EPA Headquarters, 401 M Street, S.W., Washington, D.C. For access to docket materials, please call (202) 260-3027 to schedule an appointment.

Consumer Right-to-Know Provisions in the Safe Drinking Water Act. The 1996 amendments to the Safe Drinking Water Act (SDWA) contain extensive

provisions for consumer involvement and right-to-know that herald a new era of public participation in drinking water protection. These provisions are founded on the principle that consumers have a right to know what is in their drinking water and where it comes from before they turn on the tap. With the information provided in these provisions, consumers will be better able to make health decisions for themselves and their families.

The public notification requirement is one of six interrelated provisions now included in the SDWA. The purpose of public notification is to alert persons served by public water systems that a drinking water standard has been violated and to provide information quickly to enable consumers to take precautions to protect their health. The public notification provision was included in the original SDWA, enacted in 1974. The existing regulations are being revised here to address revisions in the 1996 SDWA amendments.

Five other right-to-know provisions were added to the SDWA through the 1996 SDWA amendments.

- Community water systems are now required to prepare and provide to their customers annual Consumer Confidence Reports (CCR) on the quality of the water delivered by the systems. The CCR is the centerpiece of the public right-to-know provisions in the SDWA. The information contained in these reports can raise consumers' awareness of where their water comes from, show them the steps that are necessary to deliver safe drinking water to their homes, and educate them about the importance of source water protection for assuring safe drinking water. The CCR and the public notification rule are interrelated: an annual summary of violations occurring during the year is one of the elements of the CCR. EPA's regulation requiring the annual CCR was promulgated on August 19, 1998 (40 CFR part 141, Subpart O; 63 FR 44511).

All community water systems must complete the first CCR by October, 1999.

- Primacy agencies are required to prepare and release an annual report listing violations of national primary drinking water regulations (NPDWR) which occurred in the last year in the public water systems within their jurisdictions. EPA is also required to issue an annual report which summarizes and evaluates the State reports and makes recommendations concerning the resources needed to improve compliance with the SDWA. The first State violation reports were released on January 1, 1998. EPA's first report was released in July, 1998.

- Primacy States are required to make completed source water assessments available to the public. States are required under the 1996 SDWA amendments to assess the condition of every public water supply within the State, including the boundaries of the source of that water supply and contamination threats within those boundaries. The source water assessments are to be completed by the States for all public water systems by 2003.

- EPA is required to develop and make available a national contaminant occurrence database that will provide information on the occurrence of both regulated and unregulated contaminants in public water systems. This information will be made available to the public through the Internet. The initial version of the national contaminant occurrence database is scheduled for release in August, 1999.

- Primacy agencies are required to notify the public of proposed decisions to allow a variance to the federal drinking water standards involving their public water system. Public water systems serving 10,000 or fewer persons that cannot meet the requirements of EPA national primary drinking water regulations (NPDWRs), using technology identified in the NPDWR, may apply for a variance to use an alternate technology

to meet the regulation. Consumers served by that water system will be provided an opportunity to comment on or object to the variance.

All of these public right-to-know provisions are based on the belief that accountability to the public and the understanding and support of the public will be vital to address threats to drinking water quality in the years ahead. The provisions provide unprecedented opportunities for the public to participate in decisions related to the protection of their water supplies. If the public uses the opportunities, it can ensure that the choices made—particularly by EPA and the States, but also by water systems—respond to the public's needs and concerns within the constraints of the SDWA.

I. Statutory Authority

Section 114 of the Safe Drinking Water Act Amendments of 1996 (Public Law 104-182), enacted August 6, 1996, amended Section 1414(c) of the Act (42 U.S.C. 300g-3(c)). Sections 1414 (c)(1) and (c)(2) were significantly revised and require EPA to amend the existing public notification regulations. The amended rules are intended to give consumers more accurate and timely information on violations, taking into account the seriousness of any potential adverse health effects that may be involved. There is no deadline for promulgating the revised public notification rule, but EPA intends to complete this rulemaking by the end of 1999 to allow States and the regulated community to coordinate public notification implementation with implementation of the Consumer Confidence Report.

The public notification (PN) provisions were part of the original SDWA in 1974 and were subsequently modified in the 1986 SDWA amendments. The public notification regulations currently in place were promulgated in 1987 and became effective in 1989 (40 CFR 141.32). The existing rule remains in place until the new rule is promulgated.

SDWA Section 1414(c)(1) establishes who must give public notice, under what circumstances a notice must be given, and who must receive the notice. Section 1414(c)(1)(A) requires that all public water systems give notice to all persons served of any failure to comply with any national primary drinking water regulations (NPDWR), including any required monitoring. Section 1414(c)(1)(B) further requires a public water system to provide a notice when it is operating under a variance or exemption, and when a water system fails to comply with the requirements of

a variance or exemption. Section 1414(c)(1)(C) authorizes EPA, at the Administrator's discretion, to require public water systems to provide notice of the concentration level of any unregulated contaminant monitored under EPA regulations. Except for the addition of paragraph (C) of Section 1414(c)(1), these requirements are unchanged from the previous SDWA.

Section 1414(c)(2) sets the specific requirements for the form, manner, and frequency of the notice. Section 1414(c)(2)(A) requires EPA to issue regulations, after consultation with the States, that prescribe the detailed public notification requirements. The regulations must provide for different frequencies of notices based on the persistence of the violations and the seriousness of any potential adverse health effects that may be involved. Except for now requiring EPA to consult with the States prior to promulgating the revised regulations, the general directions to EPA for issuing regulations are unchanged from the previous SDWA.

Section 1414(c)(2)(B) enables States, at their option, to establish alternate requirements with respect to the form and content of the public notice, as long as the alternative State program provides the same type and amount of information as required under the EPA regulations. This Section was added with the 1996 amendments.

Section 1414(c)(2)(C) directs EPA to issue regulations which require public water systems to distribute a notice within 24 hours to all persons served for violations with potential to have serious adverse effects on human health from short-term exposure. The public water system is also required to send the same notice to the primacy agency and to consult with the primacy agency within the same 24-hour period on any additional public notice requirements. This section is a new statutory requirement.

Section 1414(c)(2)(D) directs that EPA's regulations require public water systems to provide written notice to each person served for each violation not covered under Section 1414(c)(2)(C). The Section specifies that the notice may be: (1) in the first bill, if any, after the violation; (2) in an annual report issued no later than one year after the violation; or (3) by mail or direct delivery as soon as practicable, but no later than one year after the violation. This section significantly revises and simplifies the previous statutory requirements on the form, manner, and timing of the notice.

Section 1414(c)(2)(E) allows the Administrator the option to require the

public water system to give notice to persons served of the results of unregulated contaminant monitoring required by EPA under 1445(a). EPA will soon propose a revised unregulated contaminant monitoring regulation (UCMR). This section is new under the 1996 SDWA amendments.

This rule, when issued in final form, is intended to fulfill the rulemaking requirements outlined in amended sections 1414(c)(1) and 1414(c)(2).

II. GAO Report Findings and Recommendations Regarding Public Notification

In June, 1992, the General Accounting Office (GAO) issued a report entitled: "Drinking Water Consumers Often Not Well Informed of Potentially Serious Violations" (GAO/RCED-92-135). GAO found:

- Low compliance with the existing public notification requirements on the part of public water systems and limited compliance tracking and enforcement on the part of EPA and the States;
- Aspects of the requirements may be a complicating factor, especially for small systems, making it difficult to effectively communicate important information to consumers; and
- Notices tended to be too technical, provide little guidance on actions to take in response to violations, and not focus enough attention on the most serious violations.

GAO made several recommendations to improve the public notification process, including:

- Changing the regulations to focus notification on more serious violations by allowing water systems to consolidate notices for less serious violations;
- Revising the health effects language to be less technical; and
- Better oversight by EPA and the States.

EPA used the GAO findings and recommendations from this audit as one of the principal starting points in developing the proposed rule.

III. Consultation With Public Water Systems, State and Local Governments, Environmental Groups, and Public Interest Groups

Today's proposal is based on input from a broad range of stakeholders from the public and private sectors. The Agency has actively involved the States as partners in the rule development and has held a series of stakeholder meetings throughout the country to gain input and information from other groups and individuals.

First, Section 1414 (c)(2)(A) requires that EPA consult with the States before

revising the public notification regulation. Accordingly, EPA met very early in the regulatory development process with a group of States, as part of the early involvement meetings set up by the Association of State Drinking Water Administrators (ASDWA), to develop the scope of the process and identify significant issues under the new statute. States participated throughout the development process as members of the EPA regulation workgroup. EPA provided briefings to ASDWA on request several times during the past year as the development of the rule moved forward.

Second, in addition to the active involvement and consultation with the States, EPA held a series of well-attended stakeholder meetings early in the process to solicit input on the scope of the rule, issues with the current rule and how they could be corrected, and how the statutory changes should be covered in the regulation. Over a period of four months in late summer and fall of 1997, EPA held stakeholder meetings in Indianapolis, Indiana, Washington, D.C., and Seattle, Washington. The participants at these meetings ranged from State and local government officials (including water utilities) to risk communication experts and representatives of public interest groups. During this same period, meetings were also held with the Washington Drinking Water Advisory Committee, a statewide group of managers from various public and private entities, and a group of utility and State managers from several Midwestern States. Several recurring themes surfaced during these meetings:

- Public notices are extremely important to consumers; they must reach the appropriate audiences in a timely fashion to protect public health and allow consumers to make choices.
- It appears that the public notification process has not been effective (i.e., based on the results of the 1992 GAO audit and stakeholder experiences); a new regulation has to be less complex and better targeted to the seriousness of the violation to be effective.
- Public notices and their follow-up must be tailored carefully to the specific situation to be effective: it depends on the specific violation; the type and size of the water system; the affected population; and the availability of communication outlets. Therefore, any EPA regulation must be flexible enough to accommodate local situations.
- The timing and content of the public notices should be differentiated based on the severity of the violations.

- Public notices of violations should never be the centerpiece of a public water system's consumer awareness approach. EPA should actively encourage water systems to closely coordinate the public notice requirements with the Consumer Confidence Report and other longer term education strategies.

Third, EPA has begun a new initiative outside the rulemaking process, in collaboration with the States, utilities, and public interest groups, to develop a public notification handbook. The handbook will provide public notification "templates" for public water systems to help them respond quickly to the many different violation circumstances they may encounter. This initiative, which involves a series of focus group meetings with the public and others to assess effectiveness, provides "real world" experience in advance of the final rulemaking. The Handbook is not intended as an additional set of regulatory requirements, but rather as a resource that public water systems may use at their discretion to craft effective and timely notices. The draft handbook is being issued concurrently with the proposed rule. It will be announced through the **Federal Register** and copies will be mailed to stakeholders and made available through EPA's Internet home page.

Finally, EPA continues to provide information to our stakeholders on the status of the rulemaking. EPA periodically provides updates to the National Drinking Water Advisory Council and informational briefings, upon request, to other stakeholder groups.

IV. Discussion of Proposed Rule

A. Purpose and Applicability

The rule being proposed today revises the minimum requirements public water systems must meet regarding the form, manner, frequency, and content of the public notification. Public water systems must give notice to all persons served for all violations of National Primary Drinking Water Regulations (NPDWR) and for other situations posing a risk to public health from the drinking water. The term *NPDWR Violations* is used in the public notification regulations to include violations of Maximum Contaminant Level (MCL), Maximum Residual Disinfectant Level (MRDL), treatment technique (TT), monitoring, and testing procedure requirements. Public notice is not required, for example, for violation of the new Consumer Confidence Report regulation. See Table 1 and Appendix A

of the proposed rule for the NPDWR violations and other situations requiring a public notice. Violations not listed in Appendix A do not require a public notice under Subpart Q.

The rule would apply to existing and new public water systems that violate a NPDWR or have other situations that pose a risk to health from the drinking water. A "public water system," as defined in 40 CFR 141.2, is "a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals daily at least 60 days out of the year."

A public water system is either a community water system (CWS) or non-community water system (NCWS). A CWS, as defined in § 141.2, means "a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents." A NCWS means "a public water system that is not a community water system."

Non-community water systems are further broken out in the drinking water regulations into transient non-community water systems (TWS) and non-transient noncommunity water systems (NTNCWS). A NTNCWS is defined by EPA under § 141.2 as "a public water system that is not a community water system and that regularly serves 25 of the same people over six months of the year." An example is a school or business that has its own water well. A TWS is defined by EPA under § 141.2 as "a noncommunity water system that does not regularly serve 25 of the same persons over six months of the year." An example is a roadside rest stop with its own water well.

For illustration purposes, Table A provides a summary of the number of public water systems, broken out by type of system, the number of these systems with violations during FY 1996, and the total number of violations during the same period. Table A shows that 46,572 of the 172,248 public water systems had one or more violations in FY 1996. Overall, the 46,572 public water systems with violations committed 243,604 violations in FY 1996. The overwhelming majority of these violations were failure to monitor according to the regulations. Although not all violations require a separate public notice, each violation requires the public water system to comply with the public notification requirements.

TABLE A.—NUMBER OF WATER SYSTEMS REGULATED UNDER PUBLIC NOTIFICATION RULE IN FY 1996

Type of water system	Number of systems	Systems with violations	Violations
1. Community Water Systems (CWS)	55,427	14,620	126,853
2. Nontransient Noncommunity Water Systems (NTNCWS)	20,237	6,227	51,796
3. Transient Noncommunity Water Systems (TWS)	96,584	25,725	57,565
Public Water Systems (PWS)	172,248	46,572	236,214

Source: PWS Inventory and Compliance Statistics: FY 1992–FY 1996.

As shown in Table A, 55,427 of the regulated public water systems are CWSs. CWSs must comply with all the NPDWRs in effect, currently covering 80 separate contaminants. CWSs serve residential populations and range from large municipal systems that serve millions of persons to small systems, which serve fewer than 100 persons. CWSs can be further categorized as publicly-owned systems, privately-owned systems, and systems which provide water as an ancillary function of their principal purpose. In FY 1996, 14,620 CWSs committed 126,853 violations. Approximately 80 percent of community water systems serve fewer than 3,300 people.

Of the regulated public water systems, 20,237 are NTNCWS. Virtually all NTNCWSs provide water as an ancillary function of their principal purpose (for example, schools, day-care facilities, factories). NTNCWSs must comply with the same national primary drinking water regulations as community water systems. During FY 1996, 6,227 NTNCWSs committed 51,796 violations. Approximately 99 percent of NTNCWSs serve fewer than 3,300 people.

The balance of the regulated public water systems (96,584) are TWS. Virtually all TWSs provide water as an ancillary function of their principal purpose (for example, highway rest stops, gas stations, state parks). TWSs must comply only with existing national primary drinking water regulations where short-term violations may pose a health threat—total coliform, nitrate, nitrite, combined nitrate+nitrite, and the surface water treatment rule. In FY 1996, 25,725 TWSs committed 57,565 violations. Over 99 percent of TWSs serve fewer than 3,300 people.

B. Effective Dates and Rationale

EPA is proposing that the revised public notification rule become effective no later than two years after the final rule is published in the **Federal Register**

or on the date the primacy agency's revised regulation becomes effective, whichever comes first. Setting the two-year effective date matches the time period allowed for States under the primacy regulations (40 CFR Part 142, Subpart B) to adopt new or revised National Primary Drinking Water Regulations (NPDWRs). As the public notification rule is not an NPDWR, EPA has discretion to set an effective date for the revised rule. EPA believes it is appropriate to set the effective date consistent with the basic two-year time period allowed States to adopt the revised regulation. This coordinated phase-in of the new public notification requirements in each State will be more efficient and will avoid the potential confusion of having different State and EPA requirements in effect at the same time.

EPA is proposing to make the rule effective in a State as soon as the State's revised regulation is effective under its primacy program. In practical terms, this will mean that the new requirements will go into effect at different times nation-wide based on the speed of the State adoption of the new requirements. Where EPA directly implements the program (such as in Wyoming and Washington, D.C., and on Indian lands), the revised rule will go into effect 90 days after EPA publication of the final rule. Regardless of the primacy situation, the rule would go into effect after two years for all water systems, even in those States that request and are granted an extension to adopt the revised regulation beyond the basic two-year time period.

The revised public notification rule will apply to new and existing violations of NPDWRs, variances or exemptions granted by a primacy agency, and violations of conditions of an existing variance or exemption after the effective date of this rule. However, EPA does not intend to require that public water systems provide initial

public notices under the new rule for violations and situations where the initial public notice has already been given under the regulations in place at the time. Unless the primacy agency makes a different determination on a case-by-case basis, the revised rule will apply to repeat notices for existing violations or any public notice requirements applying subsequent to the public notices given under the old rule.

EPA considered a number of options on the effective date of the rule before settling on the two-year time frame. EPA believes that the new regulation, consistent with the revised statute, will make the public notification process simpler, more efficient, and better targeted than the current regulation. In this respect, the sooner the new rule goes into effect, the more effective the public notification process will be. However, because the proposed rule replaces a State program already in operation, applying the new rule to public water systems well in advance of the change in the State program would be confusing to the regulated community and the public. It could result in two sets of public notice requirements (i.e., the current State rule and the new EPA rule) being in effect for the public water systems during this transition period. Because the intent is still to replace the current regulation with the new streamlined rule as soon as possible, comments are requested on the proposed effective date. Suggestions on other options to put the new regulations into effect sooner are welcome.

C. Summary of Changes to Current Public Notification Requirements

The proposed rule is substantially different from the public notification regulation currently in effect. Table B is a summary of the major differences between the current regulation and the proposed rule.

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN PROPOSED RULE AND EXISTING RULE

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Proposed rule (part 141, subpart Q)
1414(c)(1) Each owner or operator of a PWS shall give notice of NPDWR violations, levels of unregulated contaminants, and existence of a variance or exemption.	(§ 141.32(a) and (b)) Owner or operators of PWSs must notify for the following violations/situations: Maximum contaminant levels (MCL) Treatment technique Testing procedure Monitoring Operation under a variance or exemption Noncompliance with variance or exemption schedule	(§§ 141.201(a) and 141.202(a)) Includes violations from current rule and adds broader definition of waterborne disease outbreak, adds new IESWTR and DBP standards, moves fluoride SMCL and unregulated contaminant monitoring public notices from other parts of the regulations. Adds a new Appendix A to the rule listing all violations and situations where public notification is required.
1414(c)(2)(A) Manner, frequency, and form are prescribed based on seriousness and frequency of violations.	(§§ 141.32 (a)(1)(iii) and 141.32(a) and (b)) There is a three-tier system, although tiers are not named. Public notices are divided into three tiers: violations of MCLs that may pose an acute risk to human health; MCLs, treatment technique, and variance or exemption schedule violations; and other violations (including monitoring) and operation under a variance or exemption.	(§ 141.201(b)) Tiers are defined based on seriousness of the violation or situation and of potential health effects, and all violations or situations are assigned to a tier (Appendix A) <i>Tier 1</i> notice for violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure; <i>Tier 2</i> notice for all other violations or situations with potential to have serious adverse effects on human health; and <i>Tier 3</i> notice for all other violations and situations not included in Tier 1 and Tier 2.
1414(c)(2)(C)(iii) Notice must be provided to Administrator or primacy agency	(§ 141.31(d)) System must provide a copy of the notice to the State within 10 days.	(§ 141.31(d)) Revised to require PWS to submit a certification and a copy of the notice to the primacy agency within 10 days. (§§ 141.202(b) and 141.201(c)) New section added to require consultation with primacy agency within 24 hours for violations or situations requiring a Tier 1 notice.
1414(c)(2)(C)(1) For violations with potential to have serious adverse effects on human health as a result of short-term exposure, notice must be distributed as soon as practicable but no later than 24 hours after the occurrence of the violation	(§ 141.32(a)(1)(iii)(A)–(D) <i>Acute violations</i> include (1) Any violations specified by State (2) Nitrate/nitrite MCLs (3) Fecal coliform/ <i>E. coli</i> (4) Waterborne disease outbreak in unfiltered systems subject to Surface Water Treatment Rule Provide copy of notice to radio and TV stations within 72 hours, or by posting or hand delivery within 72 hours. Posting must continue as long as the violation exists. Additional notices: by newspaper within 14 days or posting or hand delivery if no newspaper is available; by mail within 45 days (may be waived if state determines violation has been corrected); and repeat notice every three months thereafter.	(§ 141.202) <i>Tier 1 notice</i> — Violations and situations include those defined as acute in the current rule, plus: an expanded definition of waterborne disease outbreak to include all water systems; chlorine dioxide MRDL violation under new DBP rule where samples taken in the distribution system exceed the standard or where samples are not taken in the distribution system; and violation of the testing procedures to determine if fecal coliform is present after the presence of total coliform in the distribution system is confirmed. Timing revised to require notice within 24 hours; must be by electronic media, posting, or hand delivery, plus any additional methods necessary to reach all persons served. Revised to not require additional notices for same violation, deferring instead to the primacy agency to set additional requirements (including additional notices) on a case-by-case basis.
1414(c)(2)(D)(1) Regulations shall specify notification procedures for violations other than Tier 1; notice shall be in written form	(§ 141.32(a)) For MCL, treatment technique, and variance or exemption schedule violations.	(§ 141.203) <i>Tier 2 notice</i> includes those described in § 141.32(a) of the current rule, plus the new standards under the IESWTR and DBP rules, and serious and persistent monitoring and testing procedure violations, as determined by the primacy agency.

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN PROPOSED RULE AND EXISTING RULE—Continued

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Proposed rule (part 141, subpart Q)
Notice to new billing units (not in statute)	<p>By newspaper within 14 days or by posting or hand delivery if no newspaper is available.</p> <p>Additional notices: by mail within 45 days (may be waived if state determines violation has been corrected), and repeat notice every three months thereafter by mail or hand delivery.</p> <p>(§ 141.32(b) For monitoring and testing procedure violations, and operation under variance or exemption.</p> <p>By newspaper within three months of the violation or the granting of variance or exemption, or by hand delivery or posting if no newspaper is available. State may allow less frequent public notice (up to 1 year) for minor monitoring violations.</p> <p>Repeat notice every three months thereafter by mail or hand delivery.</p> <p>(§ 141.32(c)) Community water system must give a copy of the most recent public notice for any outstanding violation of any MCL, any treatment technique requirement, or any V&E schedule.</p>	<p>Revised to require notice within 30 days unless the primacy agency allows an extension of up to three months for specific circumstances. Unless primacy agency directs otherwise, CWS must use mail or direct delivery, and other methods reasonably calculated to reach persons served. NCWS must use posting, direct delivery, or mail, and other methods reasonably calculated to reach persons served.</p> <p>The initial notice does not require multiple methods of delivery unless it is needed to reach persons served. Repeat notice required every three months where violation persists, unless the primacy agency determines less frequent repeat notice (no less frequent than annually) is warranted because of specific circumstances. Method of delivery for repeat notice is not specified.</p> <p>(§ 141.204) The violations and situations requiring a <i>Tier 3 notice</i> are the same as those described in § 141.32(b) of current rule, with the addition of a notice requirement for “other violations” determined by the primacy agency to require a Tier 3 notice.</p> <p>Revised to require notice within one year. Unless primacy agency directs otherwise, CWS must use mail or direct delivery, and other methods reasonably calculated to reach persons served. NCWS must use posting, direct delivery, or mail, and other methods reasonably calculated to reach persons served. CCR or other annual reports may be used, as long as notice in CCR meets PN requirements.</p> <p>Repeat notice annually; no method specified.</p> <p>(§ 141.206) Revised to require notice for any outstanding violation, including monitoring and testing procedure violations.</p> <p>Revised to require non-community systems to keep notice posted for as long as violation exists, even if notice was initially hand-delivered or otherwise distributed.</p>
1414(c)(2)(C)(ii) and 1414(c)(2)(D)(ii) Content of notices	<p>(§ 141.32(d)) Each notice must provide a clear explanation of the violation, potential health effects, population at risk, steps being taken to correct violation, telephone number of the owner, operator, or designee of the public water system, necessity for seeking alternative water supplies, if any, and any preventive measures consumers should take until the violation is corrected.</p> <p>(141.32(e)) Systems must include standard health effects language for MCL, treatment technique, variance or exemption schedule violations, and operation under a variance or exemption.</p>	<p>(§ 141.205) Adds “when violation was found” and “when system expects to return to compliance” to content elements. New requirement to include “contaminant level”. Adds new element requiring standard language asking bill paying customers to provide copies of notice to other persons served who may not have received the notice directly from the PWS.</p> <p>Also, adds minimum content elements for notices of operation under variance or exemption, which parallels CCR requirements. No longer requires health effects language for operation under a variance or exemption.</p> <p>(New Appendix B) Revises standard health effects language.</p> <p>Adds standard language for monitoring and testing procedure violations.</p>
Special notice for exceedance of Fluoride Secondary Maximum Contaminant Level (SMCL) (not in statute)	<p>(§ 141.32(f)) Notice of SMCL exceedances required within 12 mos.; shall contain language in § 143.5(b).</p>	<p>(§ 141.208) Moved to new Subpart Q, mandatory language is simplified</p>

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN PROPOSED RULE AND EXISTING RULE—Continued

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Proposed rule (part 141, subpart Q)
Public notice by primacy agency (not in statute)	(§ 141.32(g)) The State may give notice to the public on behalf the public water system if the State complies with the requirements of § 141.32. However, the owner or operator of the public water system remains legally responsible.	(§ 141.209) No change.
1414(c)(2)(E) Administrator may require notice of levels of unregulated contaminants monitored under section 1445(a)	(§ 141.35(d)) Written notice of availability of results within three months after system receives results (surface water systems only need to notify after the first quarter of monitoring).	(§ 141.207) Revised to require notice of availability of results within 12 months, following Tier 3 delivery requirements; deletes § 141.35(d).
1414(c)(2)(B) States may establish alternative notification requirements	(§ 142.10(a)) Authority to require public water systems to give public notice that is no less stringent than the EPA requirements in §§ 141.32 and 142.16(a). (§ 142.16(a)) If the state chooses to decrease notice frequency for minor monitoring violations it must submit to EPA the criteria used to decide the decreased frequency and which violations are minor, and it must submit the new notice requirements.	(§ 142.10(a)) No change. (§ 142.16(a)) Deletes current requirement. Reaffirms under § 142.16(a)(1) the two year deadline (with possible 2-year extension) for State primacy program revision. New 142.16(a)(2) added to require State to include in primacy program enforceable requirements and procedures when State opts to use its discretion to deviate from EPA rule. New 142.16(a)(3) added to allow primacy agencies to establish alternative public notification requirements with respect to form and content of notice, consistent with 1414(c)(2) (B) of 1996 SDWA amendments.

D. Rationale for Format of Proposed Rule

EPA is proposing a new “plain language” format for the revised public notification regulation, consistent with the requirements outlined in the June 1, 1998 memorandum sent by President Clinton to all Federal agencies and the ongoing Agency initiative to take steps to improve both the clarity and comprehension of regulatory language. The difficulty in understanding federal regulations has been a longstanding criticism of federal agencies, including EPA. The current public notification rule, in particular, has been criticized by GAO and others as being too complex and confusing to implement. This criticism was viewed by GAO in its 1992 report as one of the reasons the public notification process is ineffective.

The proposed rule is structured in a question and answer format. Where possible, tables were inserted in the rule to make the various requirements easier to understand. In addition, EPA is proposing that an appendix be added to list the acronyms used in the public notification regulation. (See Appendix C to 40 CFR Part 141, Subpart Q.)

EPA welcomes comments on the new format and is soliciting ideas on ways to make the public notification regulation

more readable by the regulated community:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and ordering of sections, use of headings, paraphrasing) make the rule easier to understand?
- Would more (or shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

E. General Provisions of Proposed Rule (§ 141.201)

Today's proposal would replace the existing public notification regulation with an entirely new subpart (40 CFR Part 141, Subpart Q), which incorporates the new provisions under sections 1414(c)(1) and (c)(2) of the SDWA, as amended in 1996, and would streamline the requirements to more effectively meet the objectives of the public notification process. Informing consumers of violations has been a key feature of the SDWA since the statute was first enacted in 1974.

The primary purpose of public notification is to inform consumers of

any potential adverse health effects related to the drinking water provided to them and of the steps they can take to minimize the impact. Public notification also addresses the fundamental issue of consumer-right-to-know, providing information on a timely basis that allows consumers to make informed choices about use of their drinking water. The statute requires EPA to issue regulations prescribing the manner, frequency, form, and content for giving public notice. The proposed rule would revise the existing public notification requirements:

- To focus the public notification on the violations posing the greatest potential risk to public health,
- To give greater latitude to States to develop alternative programs to meet their unique needs;
- To provide greater flexibility to public water systems to tailor distribution of the notice to best reach the affected population; and
- To encourage water systems to use the annual Consumer Confidence Report or other annual reporting mechanism to give the initial public notice for less serious violations.

These changes to the regulation are intended to better meet the purposes of the public notification process to better

inform consumers about drinking water issues affecting their health.

1. *Who must give public notice?* EPA is proposing to amend the current regulatory language to explicitly require public notice for "other situations determined by the primacy agency to have potential of serious adverse effects on human health." (See Table 1 of 40 CFR 141.201 of the proposed rule.) Other than this addition, EPA is proposing to maintain the current regulatory requirements defining who must give public notice and in what situations it must be given. Public water systems are required under the proposed rule, as now, to give public notice to persons served by the system for any failure to comply with a National Primary Drinking Water Regulation (NPDWR), including any monitoring and testing procedure requirements, and where the water system is operating under a variance or exemption to the NPDWR. The proposal will include the public notification provisions for the new Disinfection Byproduct (DBP) and Interim Enhanced Surface Water Treatment Rule (IESWTR) regulations which were published on December 16, 1998 (63 FR 69389 and 69477).

The proposed new language to this section enables the primacy agency to require public notice for other situations not explicitly listed under Sections 1414(c)(1) and (c)(2) of the SDWA. EPA recognizes that Sections 1414(c)(1) and (c)(2) limits public notification requirements to violations of NPDWRs or required monitoring, variances and exemptions, and unregulated contaminant monitoring results. Thus, the situations identified for public notice in Sections 1414(c)(1) and (2) are limited to violations or notification concerning existing drinking water regulations. However, in some cases, such as in the Milwaukee cryptosporidium outbreak, dangerous situations may occur without a violation of existing drinking water requirements. In these cases as well, public notification may be critical to informing the public of the need to take immediate steps to avoid health risks. EPA is proposing to add such situations to the list of required public notices in this rule. The Agency believes that Section 1445(a) of the SDWA provides ample additional authority for requiring public notification of situations other than those listed in Section 1414(c)(1) and (c)(2) that are deemed by EPA in its regulations or by the primacy agency on a case-by-case basis to present a potential danger to drinking water consumers.

To improve the clarity and understanding of when a public notice is required, the proposed rule also consolidates into a new subpart (Part 141, Subpart Q) other special public notice requirements (i.e., exceedance of the fluoride secondary MCL; the notice of the availability of the results of unregulated contaminant monitoring data). A list of all violations and situations requiring a public notice, including the specific regulatory citation, is presented in a detailed Appendix A attached to the rule. Appendix A is intended to be updated as new NPDWRs are promulgated or when other situations arise where a public notice is required. A public notice is only required for the violations or other situations listed in Appendix A (unless the primacy agency requires notice for other situations.).

EPA is asking for comment on the proposed addition of explicit regulatory language enabling the primacy agency (including EPA in its regulations) to require public notification for other situations it believes have the potential for serious health risk. EPA is also asking for comment on its proposal to present in tabular form all the situations requiring a public notice and its plans to update Appendix A as new rules are promulgated.

2. *What type of public notice is required for each situation?* EPA is proposing to divide the public notice requirements into three tiers:

- *Tier 1 Public Notice*, for violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure;
- *Tier 2 Public Notice*, for other violations and situations with potential to have serious adverse effects on human health; and
- *Tier 3 Public Notice*, for all other violations and situations requiring a public notice not included in Tier 1 and Tier 2.

The form, manner, and frequency of the public notice is determined by the tier the violation or situation is assigned. Appendix A assigns each violation and situation to one of the three tiers. The specific requirements for the public notice in each tier are defined under §§ 141.202, 141.203, and 141.204 of this proposed rule.

The proposed three-tier approach to public notification will be consistent with the intent of the new public notification provisions in the 1996 SDWA amendments. Section 1414(c)(2)(A) directs the Administrator to issue regulations that provide for different frequencies of notice based on the differences between intermittent and

persistent violations and the seriousness of any potential adverse health effects. Section 1414(c)(2)(C) sets very specific requirements for violations with potential to have serious adverse effects on human health from short-term exposure. This includes a new requirement that such notices be distributed to all persons served no later than 24 hours after the occurrence of the violation. Section 1414(c)(2)(D) requires EPA to define in its regulations the notification procedures for all violations not included under subparagraph (C). This section requires that such procedures specify that the water system provide written notice to each person served in either: (1) the first bill prepared, if any, after the violation; (2) in an annual report issued no later than one year after the violation; or (3) by mail or direct delivery as soon as practicable, but no later than one year after the violation.

EPA was guided by several objectives in developing and evaluating options to meet the provisions under Sections 1414(c)(1) and (c)(2) of the 1996 SDWA amendments. The proposed regulation reflects these baseline objectives:

- First, to be effective in meeting the statutory mandate under 1414(c)(2)(C) to get the notice out no later than 24 hours for the most serious violations affecting health from short-term exposure, the public notice regulations had to focus sharply on a very limited set of violations. EPA believes that requiring the 24-hour notice for too many violations would be confusing, complex, and more difficult to implement. It might also dilute the effectiveness of the 24-hour notices if customers receive too many of them. Therefore, EPA decided in its proposal to limit the requirements for 24-hour notices to those violations with very strong evidence of serious short-term health risks. Other violations and situations that may require a 24-hour notice on a case-by-case basis would be handled by the primacy agency. EPA recognizes that there are other violations with possible short-term health effects which have not been included in Tier 1. But EPA believes these violations do not routinely require the same urgency as those violations where the evidence of serious short-term risk to health is strong. Examples of such violations include Total Coliform Rule (TCR) violations where no fecal coliform is present and surface water treatment rule treatment technique violations.

- Second, to address the notice requirements for all the other violations, the public notice regulation has to take into account the differences in risk between the different types of

violations. A sharp separation is clear between the violations that may pose a direct risk due to exposure to harmful contaminants (either from short-term or chronic exposure) and the vast majority of violations which pose no known health risk in themselves. Examples that may pose a direct health risk are:

- Violations of the maximum contaminant levels (MCLs) and maximum residual disinfectant levels (MRDLs), because the contaminant was actually found in the drinking water at harmful levels; and
- Violations of treatment technique (TT) requirements, because such a violation indicates a deficiency in water system treatment or operations that increases the likelihood that contaminants may be in the drinking water.

Violations that are not directly related to health risks include the majority of the monitoring and testing procedure violations, which are onetime violations resolved during the next monitoring period. The purposes of the public notice for the two groups are different. Notices for MCL, MRDL, and TT violations are necessary to inform consumers where the probability of direct exposure to harmful contaminants is elevated, to give them an opportunity to take action to avoid continued exposure. Timing of the notice is important. Notices for monitoring violations in most cases are necessary to meet a consumer right-to-know objective, separate from the known or potential health risks from the drinking water. An annual summary for these violations is adequate.

- Third, to be effective, the public notice regulation has to be easy to understand, be simple to implement in practice, and must provide States and water systems enough flexibility to tailor their public notices to the specific local situation. EPA is well aware that the complexity of the current public notification regulations is a contributing factor in the inability of public water systems to meet the legislative objectives.

EPA considered a number of options for meeting these objectives. Other than the proposed three-tier option, the option most seriously considered was to define a two-tier public notice structure, separating violations with potential short-term health effects from all other violations. The first tier would incorporate the provisions under 1414(c)(2)(C). The regulations for the second tier would either prescribe the form, manner, and frequency of the notice or simply incorporate the statutory language under 1414(c)(2)(D).

This option would allow the primacy agencies to define additional notice requirements to separate the violations posing potential health risks from other administrative and technical violations. Where primacy agencies had no alternative program, the discretion on the notice requirements for these other violations would be left to the individual water systems. The advantages of such a two-tier public notice structure are that it would make the federal requirement simple for water systems to understand, would leave greater flexibility to the States to tailor the public notice requirements to their specific needs, and would probably result in fewer separate notices for violations in the lower tier. This might lead customers to take notices for violations in the upper tier more seriously.

However, EPA is not proposing this two-tier structure. EPA and most of the stakeholders EPA consulted believe there are compelling reasons for the EPA regulation to differentiate among the lower tier violations based on the seriousness and urgency of the risk. These violations span a wide range of potential health risks. A "middle-tier" public notice requirement between the 24-hour notice and the annual notice is appropriate for those lower-tier violations and situations that may have the potential for serious adverse effects on human health, but are not significant or urgent enough to require an emergency notice. EPA believes a three-tier system of public notification would:

- Effectively separates the form, manner, content, and frequency of public notice based on the seriousness of any potential adverse health effects (as mandated under 1414(c)(2)(A));
- Meets the clear objectives and purposes of public notification;
- Be simple and straightforward to implement; and
- Meets the requirements of the statute.

EPA requests comment on whether the two- or three-tiered structure would be more appropriate for the final EPA regulation and what the advantages and disadvantages of the preferred tier structure would be.

3. *Who must be notified?* The SDWA requires that public notice be provided to "the persons served by the system." (SDWA, Section 1414(c)(1)). Reaching the persons served may pose a challenge to some water systems. Some consumers (such as apartment dwellers, other renters, and condominium residents) may not be the persons paying the water bill. Thus, the form and manner of the public notice necessary to reach the persons served is unique to the local

situation. The proposed rule will require water systems to provide the notice in a form and manner that is reasonably calculated to get the information to all persons served in the required time period. The minimum methods to satisfy this requirement are specified in the proposal for each public notification tier. The proposed rule would also retain the requirement that copies of the public notice be sent to the primacy agency within 10 days, in accordance with the requirements proposed in 40 CFR 141.31(d).

F. Form, Manner, and Frequency of the Tier 1 Public Notice: Violations With Significant Potential To Have Serious Adverse Effects on Human Health as a Result of Short-Term Exposure (§ 141.202)

Today's rule proposes to define the form, manner, and frequency of a Tier 1 public notice and to require that public water systems use a Tier 1 public notice.

1. *Tier 1 Violations and Situations*

The proposed rule would require a Tier 1 public notice for the following violation categories and other situations:

- Violation of the MCL for total coliform, when fecal coliform or *E. coli* are present in the water distribution system; or failure to test for fecal coliforms or *E. coli* after the presence of coliform bacteria is confirmed in the water distribution system;
- Violation of the MCL for nitrate, nitrite, or combined nitrate+nitrite;
- Violation of the MRDL for chlorine dioxide, where one or more required repeat samples taken in the distribution system the following day exceed the MRDL, or when repeat samples are not taken in the distribution system;
- Occurrence of a waterborne disease outbreak, as defined in § 141.2; and
- Other violations or situations with significant potential to cause serious adverse health effects from short-term exposure, as determined by the primacy agency.

The violations and situations listed here as requiring a Tier 1 public notice all have significant potential to cause serious adverse health effects from short-term exposure to the drinking water. The list of violations requiring a Tier 1 public notice include all those defined as posing acute health effects in the current rule. In addition, three new violations and situations are being proposed today for Tier 1 public notice:

- First, a Tier 1 notice would be required for violations of the new chlorine dioxide standard when the violation is based on monitoring results in the distribution system. This was

added to the list of violations requiring a Tier 1 notice to be consistent with the public notification requirements included with the disinfection byproducts regulation published on December 16, 1998 (63 FR 69389). Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposure. Systems that do not monitor for chlorine dioxide in the distribution system after exceeding the MRDL in entry point monitoring also must issue a Tier 1 notice, to remain in effect until they are able to demonstrate that chlorine dioxide is not present at these harmful levels in the distribution system.

- Second, the Tier 1 coverage for waterborne disease outbreaks would expand the definition in the current rule beyond violations of the SWTR for unfiltered systems. The proposed rule broadens this definition to include waterborne disease outbreaks from all public water systems that meet the definition in § 141.2:

Waterborne disease outbreak means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

Expanding the coverage to require a Tier 1 notice from any public water system linked to a waterborne disease outbreak meets the public health objectives of the public notification provision. The Agency believes that Section 1445(a) of the SDWA provides ample additional authority for requiring public notification in such situations, even where the situation is not explicitly listed as requiring public notification in Section 1414(c)(1) and (2) of the SDWA. [See discussion of this in Section IV.E.1 above.] This expansion of the Tier 1 public notification requirements was recommended and broadly supported by the stakeholders consulted during the development of the proposed rule.

- Finally, failure to test for fecal coliform once the presence of total coliform in the water distribution system is confirmed would trigger a Tier 1 public notice, to remain in effect until the system was able to demonstrate that fecal coliform or *E. coli* bacteria is no longer present. The current rule does not specifically address the public notice requirements when a PWS fails to test for fecal coliform after confirming the presence of total coliforms. EPA believes strongly that such violations pose great potential for short-term adverse health risks to consumers, because a system's failure to test for fecal coliforms in such situations may

disguise a very serious drinking water quality situation. Requiring a Tier 1 public notice in such situations was widely supported by stakeholders consulted during this rulemaking.

EPA considered several options that would add or subtract from the list of violations requiring this emergency public notice. A number of violations that may have the potential to pose health risks from short-term exposure are not included in the proposed list. Specifically, violations of the Total Coliform Rule (TCR) MCL (without the presence of fecal coliform) and the Surface Water Treatment Rule (SWTR) treatment techniques are not listed in Tier 1, although they may be associated with potential health risks from short-term exposure. The vast majority of the MCL and TT violations in FY 1996 were violations of the TCR and SWTR. EPA does not believe these violations routinely require the same urgency as those violations included in Tier 1, where the potential for serious short-term risk to health is significant whenever it occurs.

EPA is proposing to limit the violations routinely requiring a Tier 1 notice to those with a significant potential for serious adverse health effects from short-term exposure. Other violations which may have a potential for adverse health risk from short-term exposure, but where such risk is not routinely significant, would be included in the Tier 2 list. EPA believes focusing the proposed 24-hour notice requirement on the more limited set of violations will increase the effectiveness of the Tier 1 notices and lead to greater health protection. EPA recognizes that in certain situations a TCR or SWTR violation may create a significant and immediate health risk. In those situations, a 24-hour notice is necessary to immediately alert consumers to the potential risk. Because such situations are best determined on a case-by-case basis, EPA is proposing to enable primacy agencies to determine when special circumstances require 24-hour notices for situations not listed in § 141.202 of the rule.

2. Timing of the Tier 1 Public Notice (and Consultation Requirement)

The proposed rule will require that a Tier 1 public notice be provided by the public water system as soon as practicable but no later than 24 hours after the system learns of the violation. Under the proposal, the public water system would also be required to initiate consultation with the primacy agency within that same 24-hour period and comply with whatever subsequent

public notification requirements are established during that consultation.

The requirement that the public water system consult with the primacy agency within the first 24 hours of discovering the violation is new in the proposed rule. The 1996 SDWA amendments, under 1414(c)(2)(C)(iii), require that a copy of the initial Tier 1 notice also be sent to the primacy agency within the same 24 hour period after the occurrence of the violation. Under 1414(c)(2)(C)(iv), the statute requires that a public water system facing a Tier 1 notice situation distribute a notice when required by the primacy agency after consultation. EPA is interpreting the statutory requirements under clause C(iii) and clause C(iv) to require that the public water system consult with the primacy agency within the first 24 hours after the violation becomes known to the water system to determine subsequent public notice requirements. EPA further interprets the statute to require the initial public notice required within the first 24 hours under 1414(c)(2)(I) to apply regardless of when the consultation with the primacy agency takes place. In contrast, the current rule sets the subsequent public notice requirements (e.g., repeat notice frequencies, form and manner of subsequent notice, etc.) in the rule itself, rather than as a result of consultation on a case-by-case basis.

The proposed rule would identify a number of elements which may be covered during the consultation, including the timing, form, manner, frequency, and content of subsequent notices and other actions reasonably calculated to ensure the notice is provided to all persons served. Additional notices may be necessary to reach other persons served who may not have seen the initial notice and to reaffirm the seriousness of the public health risk from drinking the water. EPA also believes that a supplemental notice to announce that the violation has been resolved and the risk from the drinking water has been abated is an effective way to bring closure to the emergency situation. When to require subsequent notices can best be handled by the primacy agency on a case-by-case basis in consultation with the public water system.

In summary, the timing and process established for the Tier 1 public notice in the proposed rule would be significantly different from the current rule. First, the public water system would be required to distribute the notice within 24 hours (as required under 1414(c)(2)(C)), rather than 72 hours. This is a statutory obligation for such violations under the 1996 SDWA

amendments. Second, the proposed rule would set a new requirement that the water system consult with the primacy agency to determine subsequent public notification requirements. As described earlier, EPA interprets the statute as requiring this consultation with the primacy agency.

3. Form and Manner of the Delivery of the Tier 1 Notice

The proposed rule would allow water systems some flexibility in choosing the form and manner used to distribute the notice, but it reaffirms the enforceable requirement that the form and manner of notice delivery selected by the public water system be reasonably calculated to reach all persons served within the 24 hour period. To satisfy this requirement, the proposed rule would require water systems to use, as a minimum, appropriate broadcast media, posting of the notice in conspicuous locations, and/or hand delivery to residences or businesses served by the system. In contrast, the current rule requires that the initial notice be by electronic media and subsequent notices be first in the newspaper and later on by mail. The changes in the public notification process for these emergency-type situations are expected to ensure faster public communication that is better tailored to the specific situation.

EPA is requesting comment on the Tier 1 public notification requirements, in particular the list of violations requiring such a notice, the new consultation process now proposed in lieu of more prescriptive EPA requirements, EPA's interpretation of the statute under 1414(c)(2)(C) which allows EPA to require public water systems to consult with the primacy agency, and the revised requirements for the form and manner of the Tier 1 notices.

G. Form, Manner, and Frequency of the Tier 2 Public Notice: Other Violations With Potential to Have Serious Adverse Effects on Human Health (§ 141.203)

Today's rule proposes to define the form, manner, and frequency of a Tier 2 public notice.

1. Tier 2 Violations and Situations

The proposed rule would require a Tier 2 public notice for the following violation categories and other situations:

- All violations of the MCL, MRDL, and treatment technique requirements not included in the Tier 1 notice category;
- Violations of the monitoring and testing procedure requirements where the primacy agency determines that a Tier 2 public notice is required; and

- Failure to comply with the terms and conditions of any existing variance or exemption in place.

The above list is similar to the list in the comparable section of the current rule, with two exceptions. First, the proposed rule would set the new public notice requirements for the recently published Disinfection Byproducts Rule and the Interim Enhanced Surface Water Treatment Rule (63 FR 69389 and 69477). Second, the proposed rule would allow the primacy agency, at its option, to require a Tier 2 public notice for a specific monitoring or testing procedure violation. Unless the primacy agency determines otherwise, monitoring and testing procedure violations would be reported in the annual Tier 3 notice.

EPA considered two other options that would add or subtract from the list of violations requiring a Tier 2 notice:

- The first option was to move some of the MCL or treatment technique violations into Tier 3 rather than Tier 2, with the leading candidates for Tier 3 notice being MCL violations posing chronic health risk and the Lead and Copper Rule (LCR) treatment technique violations. EPA also considered separating the LCR treatment technique violations further, putting some of the lesser violations unlikely to pose a direct risk to public health (e.g., public education) into Tier 3. However, this could make the requirements too complex and too difficult to communicate simply. Simplicity in understanding and implementing the requirements was one of the main recommendations of the GAO report. EPA is further concerned that delaying the initial notice for MCL violations, even if levels barely exceed the standard, beyond 30 days (or three months at the primacy agency's discretion) may not be consistent with the Agency's consumer right-to-know objective.

- The second option was to move the notice for the monitoring violations from Tier 3 to Tier 2, recognizing that persistent monitoring violations could disguise potentially serious drinking water quality violations. EPA did not select this option. Instead, the proposal enables the primacy agency to require on a case-by-case basis that serious monitoring and testing procedure follow the Tier 2 public notice requirements where necessary. EPA developed an alternative approach to the proposal that is discussed in Section VI(A) of the Preamble. Comments are requested on both the proposal and the option discussed in Section VI(A).

2. Timing of the Tier 2 Public Notice

The proposed rule, under § 141.203(b), would require the public water system to provide a Tier 2 public notice to persons served as soon as practicable, but no later than 30 days after the system learns of the violation. The public water system would be obligated to get the notice out as soon as practicable, particularly where the situation requires an earlier notice. The proposal also would require the public water system to repeat the notice every three months for as long as the violation exists. Under the proposal, the primacy agency may opt to define specific violation circumstances that warrant an extension of the initial Tier 2 notice or a different repeat notice frequency for continuing violations. The proposal allows the primacy agency to define specific circumstances where the initial notice may be extended beyond 30 days (up to three months) and where the repeat notice may be set less frequently than every three months (but no less frequently than once a year).

In contrast, the current rule requires a newspaper notice within 14 days, a notice mailed to all bill-payers within forty-five days, and a repeat notice mailed every three months thereafter until the violation is resolved. The shift from 14 days to 30 days for the initial notice, with a possible extension for up to three months, is being proposed to help consumers distinguish between those violations posing significant short-term health risks requiring immediate action (Tier 1) from violations potentially posing health risks but where no urgent action by the consumer is necessary (Tier 2). The 30-day (or three month) period also would give the water system more time to initiate steps to resolve the violation before notifying the consumers.

EPA believes that giving the primacy agency flexibility to adapt the timing requirements to fit specific circumstances is clearly warranted. The violation situations under Tier 2 are very diverse, ranging from violations potentially posing a health risk from short-term exposure to violations posing a chronic risk only from long-term exposure. One size does not fit all. An extension beyond 30 days may be especially appropriate for contaminants posing a chronic rather than acute health risk (e.g., fluoride, arsenic, radium). EPA standards for such contaminants are designed to protect against long-term exposure. An extension may also be appropriate for violations that were quickly resolved and no longer pose any risk to persons served (e.g., some Total Coliform Rule

or Surface Water Treatment Rule violations). Finally, an extension to three months may allow the water system to include the initial notice in the same mailing as the quarterly bill, with no loss in effectiveness.

An alternative option to the approach proposed in today's rule would be to require a three month deadline (rather than 30 days) for delivery of the initial Tier 2 notice, and/or a one-year frequency for repeat notices rather than three months. Under this alternative, the primacy agency would retain the discretion to require the notice sooner on a case-by-case basis or across the board for all Tier 2 violations. EPA requests comment on this alternative approach to the proposal.

3. Form and Manner of the Delivery of the Tier 2 Notice

The proposed rule would retain the public water system obligation to provide the Tier 2 notice to persons served by the water system. This is a statutory obligation. The proposed rule, however, would significantly change the specific method of delivery required to meet this obligation. The proposed rule would first set a performance standard: that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. It would also require a specified minimum method of delivery, but then would provide much greater flexibility in what the water system must do to reach other persons regularly served if they are not reached by the minimum method. In contrast, the current rule (for community water systems) first requires a newspaper notice, followed by a notice either mailed or directly delivered to customers. The proposed rule would require that community water systems:

- Mail or otherwise directly deliver the notice to each customer receiving a bill (or other service connections); and
- Use any other method reasonably calculated to reach other persons regularly served by the system if they would not normally be reached by the mail or direct delivery requirement (e.g., newspaper, posting in public places, delivery to community organizations, etc.).

For non-community water systems, the current rule requires posting for as long as the violation exists. The proposed rule would require that non-community systems:

- Post or mail or directly deliver to each customer; and
- Use any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the posting,

mail, or direct delivery requirement (e.g., organization newsletter, delivery of multiple copies to a central location, etc.).

In every case, the proposal would give the primacy agency the option to prescribe a different method of delivery for the water system, based on policies and procedures established as part of their approved primacy program.

EPA believes that in practice, the proposed requirements for method of delivery for the Tier 2 (and Tier 3) notices will ensure that notices announcing violation of drinking water requirements are communicated sooner and more effectively than under the current rule to a wider range of the people served by the water system. At a minimum, those people reached by mail or direct delivery would receive the notice early enough to make informed choices about their drinking water. The notice would also reach other consumers who do not pay water bills and who are not routinely informed of the risk from the drinking water when violations occur.

EPA discussed this provision at length with the States and at various stakeholder meetings. A number of options emerged for delivery of both Tier 2 and Tier 3 notices, ranging from setting a "performance standard" with no minimum method prescribed to retaining the current very prescriptive requirements. The proposal selected was to require a minimum method to deliver the notice, but to broaden the options a water system may select in its efforts to reach other persons served. The option was proposed because it sets a clear and easily understandable minimum for all water systems to follow and requires water systems to follow a deliberate process to determine what else needs to be done to reach other persons served. Compliance requirements under the proposed option would be clear and enforceable.

EPA developed an alternative approach to the proposal that is discussed in Section VI(B) of the Preamble. Comments are requested on both the proposal and the option discussed in Section VI(B).

EPA is requesting comment on the Tier 2 public notification requirements, in particular the list of violations included under Tier 2, the 30-day time period for the initial notice, the requirement for a repeat notice of ongoing violations every three months, the discretion given to the primacy agency to extend the initial notice to three months or the repeat notice frequency to one year (either on a case-by-case basis or by rule), and the revised requirements for the method of delivery

of the Tier 2 public notice. Comments are also requested on the two specific options discussed in Section VI as alternatives to the proposed language.

H. Form, Manner, and Frequency of the Tier 3 Public Notice: All Other Violations and Situations Requiring Public Notice (§ 141.204)

Today's rule proposes to define the form, manner, and frequency of a Tier 3 public notice and to require that public water systems use a Tier 3 public notice.

1. Tier 3 Violations and Situations

The proposed rule would require a Tier 3 public notice for the following violation categories and other situations:

- Monitoring violations, unless the primacy agency determines that the violation requires a Tier 2 or Tier 1 notice;
- Failure to comply with a required testing procedure;
- Operation under a variance granted under Section 1415 or exemption granted under Section 1416 of the SDWA; and
- Any other violations and situations determined by the primacy agency to require a Tier 3 public notice.

The list of violations requiring a Tier 3 notice is similar to the list in § 141.32(b), the comparable section of the current public notification rule. The language in the proposed rule, however, notes explicitly that the primacy agency may require that public water systems provide a Tier 2 (rather than a Tier 3) notice for specific monitoring or testing procedure violations. This is discussed in Section V(G) above and in Section VI(A).

2. Timing of the Tier 3 Public Notice

The proposed rule would require that public water systems provide a Tier 3 public notice to persons served no later than one year after the system learns of the violation or begins operating under a variance or exemption. The proposal would also require the public water system to repeat the notice annually for as long as the violation or situation exists. In contrast, the current rule requires the notice to be mailed within three months (with possible extension to one year at the State's option) and a repeat notice every three months thereafter until the violation is resolved. EPA believes that the annual notice for Tier 3-type situations is appropriate, given the nature of the violation (e.g., for failure to monitor) and the great number of violations requiring such a notice (i.e., 216,522 of the 235,214 violations reported to EPA in FY 1996).

3. Form and Manner of the Delivery of the Tier 3 Notice

The proposed rule would require that public water systems provide the Tier 3 notice to all persons served by the water system. This is a statutory obligation that applies for all notices required under the public notification rule. The method of delivery requirements for Tier 3 public notices would be the same as those prescribed for the Tier 2 public notice. A summary of the requirements and a rationale are included in Section V(G) above and in Section VI(B).

Water systems have the option under the proposed rule to provide an annual notice summarizing all Tier 3 violations occurring during the previous year in lieu of individual Tier 3 public notices. For community water systems, the proposal would allow the Consumer Confidence Report (CCR) to be used as the vehicle for notifying persons served of violations occurring during the previous year. The CCR is the appropriate vehicle for initial public notices as long as the public notification timing and distribution requirements are met. In particular, the CCR must be mailed or hand-delivered to persons served and it may only include those violations occurring within 12 months of publication. The advantages to using an annual notice instead of individual notices for every violation are compelling, both in terms of reduced cost and in terms of effective communication with the consumers. Since the vast majority of violations require a Tier 3 public notice, the burden on public water systems would be dramatically reduced through use of an annual notice. EPA strongly recommends that public water systems make use of the annual notice option.

EPA is requesting comment on the proposed Tier 3 public notice requirements, in particular on the option to allow public water systems to provide an annual report of violations in lieu of individual notices twelve months after each violation. Comments are also requested on the use of the Consumer Confidence Report to meet the Tier 3 public notification requirements. Finally, comments are requested on the revised requirements for the method of delivery of the Tier 3 notices. See Section VI(B) for a discussion of an alternative to the proposed method of delivery for Tier 3 public notices.

I. Content of the Public Notice (§ 141.205)

Today's proposal specifies a list of elements that must be included in a public notice both for water systems with violations of National Primary

Drinking Water Regulations and for water systems operating under a variance or exemption. The proposed rule would carry forward from the current rule the requirement that water systems use standard health effects language for MCL, MRDL, and treatment technique violations. The health effects language in the proposed rule would be simplified in response to concerns raised by various stakeholders and the GAO report that the current mandatory health language is too lengthy and not focused on the core health effects information consumers need to know. The proposed rule also would add new standard language for monitoring violations. Finally, it would add new standard language to encourage the recipients of the public notice to distribute the public notice to others served by the water system.

Note that the States may establish alternative public notification requirements related to the content of the public notice (as part of their primacy program revision under 40 CFR 142.16(a)(3)), as long as these alternative requirements provide the same type and amount of information and are designed to achieve an equivalent level of public notice as EPA's regulation. This would allow the States, for example, to submit to EPA for approval a primacy program revision that includes alternatives to the required language on health effects, monitoring violations, or distribution of the notice to others.

1. Standard Elements of the Public Notice (§ 141.205(a)–(c))

The proposed rule would revise and edit the list of standard elements required in public notices.

- Ten elements would be required (under § 141.205(a)) for public notices for violations of the NPDWR: a description of the violation that occurred (including the contaminant level); when the violation occurred; any potential adverse health effects; the population at risk; whether alternative water supplies should be used; what actions consumers should take; what the system is doing to correct the violation; when the water system expects to return to compliance; the phone number of the water system owner or operator; and a statement appended to the notice to encourage notice recipients to distribute the notice to other consumers who might not have received their own copy of the notice.

- Four elements would be required (under § 141.205(b)) for public notices for water systems operating under a variance or exemption: an explanation for the reasons for the variance or exemption; the date the primacy agency

granted the variance or exemption; a brief status report on compliance with the variance or exemption conditions; and a notice of any opportunity for public input into the review of the variance or exemption. Note that this information is identical to that already required to be included in the CCR. Community water systems that use the CCR as the vehicle for the initial public notices would not need to add any additional information to meet the content requirements for the variance and exemption notices required under this proposal.

- Four performance standards will be listed (under § 141.205(c)) defining the adequacy of the notice: the notice must be displayed in a conspicuous way (where applicable); must not contain overly technical language or very small print; must not be formatted in a way that defeats the purpose of the notice; and must not contain language that nullifies the purpose of the notice.

- For public water systems serving a large proportion of non-English speaking consumers (as determined by the primacy agency), the public notice would be required to contain information in the appropriate language regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

The proposed rule (under § 141.205(a)) would edit and rearrange the list of required elements from the current rule. The most significant change to § 141.205(a) is to require that the notice for MCL and MRDL violations include the contaminant level. The proposed rule also would add a new section § 141.205(b) setting the required elements for a variance or exemption notice. This would be added to cover the specific notice requirements unique to water systems operating under a variance or exemption.

The proposed rule would modify the current rule by requiring public water systems serving a large non-English speaking population (as determined by the primacy agency) to either include information regarding the importance of the notice in the appropriate language, or provide a water system contact to assist the non-English speaking consumers. The current rule under § 141.32 (d) sets a similar requirement, but in much more general terms, requiring simply that the notice shall be multi-lingual where appropriate. The proposed public notification requirement is identical to the provision contained in the Consumer Confidence

Report (CCR) regulation, 40 CFR Part 141, Subpart O [63 FR 44511 (August 19, 1998)]. Under the proposed rule, public water systems serving a large non-English speaking population would be required at a minimum to take concrete steps to communicate the importance of the notice in the appropriate language so that non-English speakers could get assistance in understanding it. EPA encourages water systems to go beyond this minimum and provide a translated copy of the notice on request or offer telephone assistance in the appropriate language. The draft Public Notification Handbook issued with the proposed rule for comment contains sample language regarding the importance of the notice in various languages as well as complete sample Tier 1 public notices in Spanish.

EPA modified the list of elements to be required in the public notice in response to stakeholder requests to provide clearer national minimum standards for notice content and consistency. Comments are requested on the list of elements in the proposal, the four performance standards identified for how the notices must be presented, and the more specific requirement for public water systems to communicate with large non-English speaking populations about the importance of the public notice when violations occur.

2. Standard Health Effects Language (§ 141.205(d)(1))

The proposed rule would retain the requirement that all public notices for MCL and treatment technique violations use mandatory health effects language to explain the health risks posed by the violation. The language being proposed today in Subpart Q, Appendix B is identical to the language promulgated in the Consumer Confidence Report (CCR) regulation, 40 CFR Part 141, Subpart O, Appendix C. The proposal would replace language in the current rule that was added when each NPDWR was promulgated. The proposed language is shorter, simpler, and consistent with the language EPA uses in similar outreach forums and documents.

EPA is proposing to use the language for the public notification rule that is identical to health effects language from the CCR regulation because it does not make sense to draft different language to meet such a similar requirement, unless there is a compelling reason that is specific to the intent of the public notification provision. Although EPA recognizes that the CCR and public notice may be given at different times and may be intended to meet different objectives, EPA believes that the benefits of having identical language to

communicate the same health effects from violations outweighs the value of tailoring the language to the unique objectives of the public notice. EPA expects that public water systems will supplement the mandatory health effects language or otherwise put the language in the context of the overall notice to meet the unique purposes of the specific public notice. Examples of public notices applicable to different situations are included in the draft Public Notification Handbook which is being issued concurrently with this proposed rule for comment.

EPA is requesting comment on the proposal to use the CCR standard health effects language to meet the public notification requirement. In particular, EPA is soliciting comment on specific situations or violations where the CCR language is believed to be inappropriate or incomplete. Recommendations for alternative language for such situations would also be helpful.

3. Standard Language for Monitoring and Testing Procedure Violations (§ 141.205(d)(2))

The proposed rule would add a new section requiring that all public notices contain standard language for monitoring and testing procedure violations. The proposed standard language informs consumers that because the water system did not monitor or follow the required testing procedure during the compliance period, the presence or absence of the contaminant during that time could not be determined and the water system is unable to tell whether there was a risk to health during that time. This new mandatory language is being proposed because of stakeholder concerns that consumers may presume that because there is no reported MCL, MRDL, or treatment technique violation that the drinking water provided by their water system is safe. This may not always be an appropriate presumption. The mandatory language as proposed is intended to be included in all public notices for monitoring and testing procedure violations.

The proposed standard language was developed after the EPA workgroup (in consultation with a number of States) considered alternative approaches. EPA is soliciting comment on the proposed standard language and welcomes recommendations on alternative language that would effectively inform consumers of the significance of the monitoring violation. In particular, EPA will consider alternatives to the phrase “* * * and we are unable to tell whether your health was at risk during that time.” The phrase is included in

the proposal to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health. It is intended to raise questions about the significance of the specific monitoring violation, not to alarm consumers unnecessarily. EPA recognizes that many monitoring violations pose no risk to health and that most water systems resume monitoring quickly after a single violation. The proposed standard language will be most effective where the water system supplements the standard language with a clear explanation of what the violation meant and how it was rectified. EPA will consider options to this standard language in its final rule.

Another option would be not to require that any specific language be included for all monitoring violations, but to set a performance standard instead. The performance standard might be that all monitoring violations be explained in a way that appropriately communicates the public health significance of the violation. EPA also requests comment on this alternative approach.

4. Standard Language to Encourage Customers Receiving the Public Notice To Distribute the Notice to Other Persons Served (§ 141.205(d)(3))

The proposed rule would add a new section requiring that public notices contain standard language encouraging the customers receiving the public notice to distribute the notice to other persons served by the water system (such as tenants, residents, patients, etc.). Mailed notices, in particular, are routinely sent to only the bill-paying customers, and therefore may not reach some consumers at risk unless actions are taken to notify them of the violations. EPA believes that this standard language is appropriate as a safety net and necessary to encourage those receiving the public notice to take steps to alert others of the violations and potential risk from drinking water. Compliance with this requirement is one of the “reasonably-calculated steps” a public water system must take to reach other persons not expected to receive the initial notice. EPA requests comment on the proposed standard language and would welcome alternative language that aids the water system in reaching all persons served.

J. Other Public Notification Requirements

1. Notice to New Billing Units or New Customers (§ 141.206)

EPA is proposing to modify the current regulatory provision requiring

that community water systems send a copy of the most recent public notice to all new billing units for ongoing MCL and TT violations or existing variances and exemptions. The proposed rule would broaden the requirement to include notice for on-going monitoring and testing procedure violations and adds a new provision requiring non-community water systems to continuously post the notice or otherwise take steps to inform new customers of any ongoing violations. EPA is proposing this change to the existing requirement to better ensure that new customers served by all public water systems are made aware of any continuing violations of drinking water standards. The initial notice, if posted in a location where new consumers pass by, will meet this new requirement. However, water systems that deliver the initial notice by hand delivery or otherwise have the notice out of sight of new consumers would have an additional responsibility under this new provision. EPA believes this new provision will make notices more readily available to new consumers not receiving the notice under the current regulation. EPA requests comment on the change to the current regulation extending the requirement to cover on-going monitoring and testing procedure violations and to require that the notice be provided to new customers by both community and non-community water systems.

2. Special Notice To Announce the Availability of the Results of Unregulated Contaminant Monitoring (§§ 141.207 and 141.35)

Section 1414(c)(2)(E) of the SDWA, as amended in 1996 gives EPA the authority, at its option, to require public water systems to give notice to persons served of the concentration levels of unregulated contaminants, where such monitoring is required by EPA. The authority for EPA to require such notice was part of the SDWA prior to the 1996 amendments. However, the 1996 SDWA amendments, under Section 1445(a)(2)(E), now require public water systems to give notice of the results of the unregulated contaminant monitoring required by EPA to persons served by the system. EPA believes that the intent of these statutory provisions is met by the existing public notification provision under § 141.35, as amended under this proposal. Section 141.35 requires water systems to announce the availability of the results of required unregulated contaminant monitoring through the public notice process. Further, the CCR regulation requires the results of such monitoring to be

included in the annual CCR. Together, the two existing requirements meet the public-right-to-know objective and are protective of public health.

EPA is proposing to amend the current provision under § 141.35 and move the amended provision to the new Subpart Q. The current provision requires that the water systems give notice of the availability of unregulated contaminant monitoring results within three months of receiving the results. The amended requirement under § 141.207 retains the same reporting requirement but changes the timing from three months to twelve months after the results are known. The proposed change in the timing of the public notice is to allow water systems, at their option, to report the availability of all the results just once during the year, reducing the number of notices from four to one. For community water systems, the annual reporting requirement can also be met through the CCR, which already must include the actual results of the unregulated contaminant monitoring. EPA believes close coordination between the public notification requirement and the CCR reporting requirement for this information will be both more efficient and less confusing to the regulated community and the public.

EPA requests comment on the proposed approach to meet the requirements under Sections 1414(c)(2)(E) and 1445(a)(2)(E). EPA also requests comment on its proposal to shift the reporting frequency announcing the results of unregulated contaminant monitoring from three months to twelve months.

3. Special Notice for Exceedance of the Fluoride Secondary Maximum Contaminant Level (SMCL) (§ 141.208)

EPA is proposing to modify the standard language and to make other minor changes to the existing special notice currently required under § 143.5 for community water systems that exceed the SMCL for fluoride. The proposal would move the revised special fluoride notice requirement into the new Subpart Q public notification provision. The special public notice for exceedances of the SMCL is to alert persons served that the fluoride levels in the drinking water may pose a cosmetic dental risk to children under nine years old. The SMCL is 2 mg/l. The annual public notice would continue to be required whenever drinking water monitoring shows fluoride levels above 2 mg/l but below the MCL violation level of 4 mg/liter. The public notice requirements for violations of the fluoride MCL would be addressed

separately from the special fluoride SMCL public notice required under § 141.208.

The proposed regulation under § 141.208 will make two changes to the current public notice requirements for exceedance of the fluoride SMCL:

- To require that the form and manner of the special notice follow the Tier 3 requirements in §§ 141.204(c) and 141.204(d) of the proposed rule; and
- To revise and simplify the mandatory language, consistent with the format used to develop the revised standard health effects language for MCL, MRDL, and TT violations.

The proposed requirement that the notice be provided within 12 months from the day the water system learns of the exceedance, is unchanged from the existing requirement.

EPA believes it is important to retain the existing fluoride SMCL notice requirement with only minor conforming changes. Consumers have a right to know about the cosmetic effects from dental fluorosis that may occur in children from prolonged exposure to drinking water exceeding the fluoride SMCL. The notice requirement for exceedance of the fluoride SMCL at 40 CFR 143.5 was put in place when the fluoride national primary drinking water regulation (NPDWR) was published in April 2, 1986 [50 FR 11396]. The fluoride NPDWR replaced the more stringent MCL in place as an interim standard since the original SDWA in 1974. The interim MCL of 2 mg/l became the SMCL when the final primary standard was published on April 2, 1986. Part of the justification for reducing the stringency of the MCL from 2 mg/l to 4 mg/l was that the public would be notified of the potential for developing dental fluorosis from exposure to their drinking water when the levels exceeded 2 mg/l.

EPA considered a number of options changing the current fluoride SMCL notice requirements, ranging from eliminating the notice altogether to requiring the notice every three months rather than 12. EPA also discussed extending the SMCL notice requirement to NTNCWS, as the risk to children from drinking water exceeding the SMCL from schools and day-care centers (e.g., NTNCWS) may be as great as drinking such water from their primary residences (e.g., CWS). Although NTNCWS are not currently required to monitor for fluoride under EPA's current regulations, and therefore the EPA SMCL notice requirement does not apply, EPA recommends that both CWS and NTNCWS known to be providing drinking water with fluoride levels

exceeding 2 mg/l provide the special SMCL notice to persons served. After reviewing the various options, EPA sees no reason to re-open the decision made at that time to require the notice only when CWSs exceed the SMCL of 2 mg/l.

EPA requests comment on whether EPA should retain the special public notice for exceedance of the fluoride SMCL and, if retained, whether retaining the requirement allowing the public notice to be given 12 months after the exceedance is known is sufficient. EPA also requests comment on whether the revised mandatory language better communicates the purpose of the notice and the cosmetic risks from drinking the water.

4. Conditions Under Which the Primacy Agency May Give Notice on Behalf of Public Water System (§ 141.209)

EPA is proposing to retain the provision in the current rule specifying under what conditions the primacy agency may give notice on behalf of a public water system. Under this provision, the primacy agency may give a public notice for the public water system if all public notification requirements are met. The responsibility to comply, however, would always remain with the public water system. EPA requests comment on the proposal to retain this provision.

K. Reporting to the Primacy Agency and Retention of Records (§§ 141.31 and 141.33)

Under the current § 141.31, public water systems are required to submit copies of all public notices to the primacy agency within 10 days of completing each public notice. EPA is proposing to amend the existing reporting requirement under § 141.31 by also requiring public water systems to submit a certification to the primacy agency that all public notification requirements have been met. EPA considered a number of options to the proposal to require that public water systems certify after each violation that all public notification requirements were met:

- One option was to broaden the proposed certification provision to require a public water system to not only certify that it met the public notice requirements but also to explain how the requirements were met. EPA decided not to propose this broader requirement because such additional reporting is resource intensive and unnecessary in most cases. The requirement for water systems to send copies of all notices with a simple certification of compliance provides

sufficient information for primacy agencies to identify non-compliers.

- A second option was to leave the existing reporting provision unchanged, with no certification required. EPA believes that a self certification of compliance to the primacy agency (with copies of the notices) saves primacy agency resources and allows better targeting of non-compliers.

- A third option was to shift the 10-day requirement to submit the certification and copies of notices to the primacy agency to 30 days, three months, or even a year after the public notice. EPA is proposing to maintain the existing 10-day requirement to give primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance.

The proposal would also amend § 141.33 to require that public water systems retain public notification records for three years. The current regulation has no provision for retention of public notification records. A record retention requirement for public notices conforms with the requirements already in place for other EPA regulatory requirements (e.g., sampling results, CCRs, variances and exemptions). The record retention period of no more than three years is consistent with the limits set in the Office of Management and Budget regulations at 5 CFR 1320.5 implementing the Paperwork Reduction Act.

Regulations at 5 CFR 1320.5, governing the imposition of reporting and record keeping requirements by Federal agencies on the public, specify that those reporting information should not be required to retain records (other than health, medical, government contract, grant-in-aid, or tax records) for more than three years, unless the agency demonstrates that a longer retention period is necessary to satisfy statutory requirements or other substantial need. These regulations were published by the Office of Management and Budget to implement the Paperwork Reduction Act goal of minimizing the paperwork burden for individuals, small businesses, education, and non-profit institutions, Federal contractors, state, local, and tribal governments, and other persons resulting from the allocation of information by or for the Federal government. In accordance with these regulations, EPA is proposing a 3-year record retention requirement for public notification records.

EPA is also asking for comment on an alternative to the proposal that would extend the record retention period from

three years to five years for public notification records. EPA believes that the public notification regulation is important to public health because of the important health information provided to the public upon finding a violation. Because of the public health protection provided by this regulation, all enforcement options should be maintained by the Agency and citizens using the citizen provisions of the SDWA. Record retention will ensure speedy and less costly enforcement. This alternative to the proposal would ensure that records are available to EPA and citizens to support penalty enforcement actions for the full five year federal statute of limitations. A five-year retention period for public notification records would also be consistent with the retention period for the related CCR regulation.

EPA requests comment on the reporting and record-keeping proposal, including the alternative to the proposal to set the retention period for records under the public notification regulations to five years. EPA also requests comment on whether the record retention periods required under the related CCR regulation should be adjusted to three years, if necessary to be consistent with the final public notification retention requirement and Paperwork Reduction Act regulations.

L. Special State/Tribal Primacy Requirements and Rationale (40 CFR Part 142, Subpart B)

The rule being proposed today would amend §§ 142.16 and 142.10 of the primacy regulations (40 CFR Part 142, Subpart B) to define the requirements that States (including eligible Indian Tribes) must follow to incorporate the revised public notification regulations into their approved primacy program. The proposed rule also revises § 142.14 to require that the State retain, for three years, the certifications and public notices received from the public water systems and any determinations establishing alternative public notification requirements. Finally, the proposal revises § 142.15 to reaffirm the requirement that the State report violations of the public notification regulations on a quarterly basis to EPA.

The proposed changes to the primacy requirements for the revised public notification rule would amend both §§ 142.10 and 142.16(a). Under the primacy regulations, a State is required to adopt, as a condition of primacy, a State rule that is no less stringent than the regulation being proposed today. The requirements States must meet to receive primary enforcement responsibility ("primacy") are listed in

§ 142.10 and requirements to revise an approved primacy program are in § 142.12. Under § 142.10(b)(6)(v), each State with primary enforcement responsibility must adopt and implement adequate procedures to require public water systems to give public notice that is no less stringent than the EPA public notification requirements. Special primacy requirements unique to specific regulations are in § 142.16. The special primacy requirements for the public notification regulation are in § 142.16(a).

EPA is proposing to amend § 142.10(b)(6)(v) to replace the existing citation with the new public notification citation (40 CFR Part 141, Subpart Q). The proposed change to § 142.16(a) would delete the existing language and replace it with a new section comprised of three elements.

First, § 142.16(a)(1) would require primacy States to submit requests for approval of a revised primacy program adopting the new public notification requirements under 40 CFR Part 141, Subpart Q. States will have two years after the final rule is published in the **Federal Register** to submit a complete and final primacy program revision package to EPA, unless the State requests and EPA approves an extension of up to two additional years.

Second, § 142.16(a)(2) would require that States establish, as part of their revised primacy program, enforceable requirements and procedures when the State opts to use the authority under:

- *§ 141.201(a)*—To require public water systems to give a public notice for situations other than those listed in Appendix A, where the State determines that the situation has significant potential for serious adverse effects on human health;

- *§ 141.202(a)*—To require public water systems to give a Tier 1 public notice (rather than a Tier 2 or Tier 3 notice) for violations or situations other than those listed in Appendix A;

- *§ 141.202(b)(3)*—To require public water systems to comply with additional Tier 1 public notification requirements set by the State subsequent to the initial 24-hour notice, as a result of their consultation with the State required under § 141.202(b)(2);

- *§ 141.203(a)*—To require the public water systems to provide a Tier 2 public notice (rather than Tier 3) for monitoring or testing procedure violations specified by the State;

- *§ 141.203(b)*—To grant public water systems an extension of time (up to three months) for distributing the Tier 2 public notice, for specific circumstances defined in the State's primacy program;

- *§ 141.203(b)*—To require a different repeat notice frequency for the Tier 2 public notice (to be no less frequent than once per year), for specific circumstances defined in the State's primacy program; and

- *§§ 141.203(c) and 141.204(c)*—To require a different form and manner of delivery for Tier 2 and 3 public notices.

Third, § 142.16(a)(3) would allow the State to establish, by rule, alternative public notification requirements from those established in the rule being proposed today. Section 142.16(a)(3) incorporates language in § 1414(c)(2)(B) of the SDWA, as amended in 1996, defining the alternative program. Under this section, a State may develop an alternative program with respect to the form and content of the notice, as long as the program contains the same amount and type of information. EPA is proposing to interpret the "no less stringent" standard of EPA's primacy regulations as requiring States to maintain the same type and amount of information as EPA's rule. The State alternative public notification program would have to be approved by EPA as part of the process established under the primacy rule to review revisions to approved primacy programs.

EPA is requesting comment on the proposed requirements States would have to follow to develop the approved primacy program revision and on other changes to the State record keeping and reporting requirements related to the public notification rule. EPA is also requesting comment on the proposed interpretation of the primacy standard to be applied for review of State alternative programs.

V. Relationship of Public Notification Regulation to Consumer Confidence Report (CCR) Regulation

The rule being proposed today would be closely related to the Consumer Confidence Report (CCR) regulation promulgated in August, 1998 [63 FR 44511 (August 19, 1998)]. In developing the proposal for the public notification rule, EPA identified provisions of both rules that either overlap or need to be consistent. The proposed rule has used identical language from the CCR rule where there was an overlap, deferred to the CCR process where the public notification objectives could be effectively accomplished through the CCR, and otherwise used language consistent with the CCR when it was appropriate.

- *Health Effects Language (§ 141.205(d)(1), Appendix B)*. Language on health effects of violations is required both for the CCR and public notification. EPA is proposing that the

health effects language for the public notice would be identical to the language in the CCR (§ 141.153(d)(6), Appendix C).

- *Use of CCR for Some Public Notices (§ 141.204(d))*. The annual CCR requires an annual summary of all violations that have occurred in the last year (§ 141.153(f)). EPA is proposing today that community water systems, at their option, use the Consumer Confidence Report as the mechanism to notify their customers of any or all Tier 3 violations as long as those violations occurred within the last 12 months (see discussion in part IV(H) above). EPA is also proposing that public water systems not required to distribute a CCR consider an annual report of all their Tier 3 violations or variance or exemptions, in lieu of individual public notices. In all cases, the CCR or other annual report would have to follow the requirements of the public notice rule to be used for this purpose.

- *State Primacy Requirements (§ 142.216(a))*. Both the CCR and the public notice regulations must be adopted by the State as a condition of primacy. EPA is proposing today that the standards and process for primacy approval for the public notification rule would follow the same requirements contained in the CCR rule (§ 142.16(f)).

- *Notice of the Availability of the Results of Unregulated Contaminant Monitoring § 141.207*. The 1996 SDWA amendments for both the CCR and public notification contained provisions related to giving notice of the results of unregulated contaminant monitoring required by EPA. The CCR provision makes such reporting mandatory (§ 141.153(d) and (e)). The public notice provision (§ 1414(c)(2)(E)) requires such reporting at the option of the EPA Administrator. EPA is proposing today to defer to the requirement that such information be included in the annual CCR for community water systems. EPA is also proposing today to continue (with some revisions) to require that community water systems give notice of the availability of the results of the unregulated contaminant monitoring now required under § 141.35.

- *Certification by PWS That Public Notification Requirements Are Met (§ 141.31(d))*. The proposed rule would add a new requirement that public water systems submit a letter to the primacy agency certifying that all requirements have been met. This would be consistent with the certification requirement in the CCR regulation (§ 141.155(c)).

- *Use of Multilingual Notices (§ 141.205(c)(2))*. The CCR regulation requires that in communities with a

large population of non-English speaking residents, as determined by the primacy agency, the report must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language. The proposed public notification would be identical to the provision in the CCR rule (§ 141.153(h)(3)).

EPA is requesting comment on the approach in the proposed rule to align the public notification requirements with the parallel requirements in the CCR rule for the six areas identified above and for any other areas that would make compliance with the two rules more effective and efficient.

VI. Request for Public Comment on Alternatives to Proposal

EPA has requested comment throughout this preamble on the various elements of the regulation proposed today. EPA is requesting here comments on two specific options that are alternative approaches to what is being proposed. EPA will consider comment on these two alternative options to determine the final rule requirements.

A. Requiring Tier 2 Public Notice for Monitoring and Testing Procedure Violations

During the development of the proposed public notice requirements for specific violations, several options emerged for the proper placement of monitoring and testing procedure violations. Over 90 percent of all violations of National Primary Drinking Water Regulations are monitoring and testing procedure violations. These violations range in severity from an administrative error quickly corrected to failure to monitor over the whole year. EPA is proposing that the public notice for all monitoring and testing procedure violations follow the Tier 3 annual notice requirements, unless the primacy agency determines on a case-by-case basis that the more stringent Tier 2 notice is necessary. EPA believes that Tier 3 notices are appropriate for the vast majority of monitoring violations because they are unlikely to result in significant health threats. Recognizing, however, that in some cases they may disguise such a threat, EPA is providing flexibility to the primacy agency to place monitoring violations in Tier 2 (or even in Tier 1) on a case-by-case basis. EPA is concerned that requiring more frequent notices for monitoring and testing procedure violations on a routine

basis may dilute the effectiveness of the public notification process.

Some stakeholders have expressed concern that this proposal was not sufficiently protective of public health and the consumer's right-to-know. They argue that placing all monitoring and testing procedure violations in Tier 3, even though the primacy agency has the option to place them in a higher tier when warranted, may in some cases increase the possibility that timely public notices for serious violations would not be made. In cases where inadequate monitoring disguises MCL or TT violations, the lack of timely notice may pose a risk to public health.

EPA is, therefore, requesting comment on an alternative to the proposal that would require public water systems to use Tier 2 (rather than Tier 3) public notice for monitoring and testing procedure violations. Under this alternative proposal, primacy agencies would be allowed, by rule, to designate some or all monitoring and testing procedure violations as Tier 3 rather than Tier 2. The presumption under this alternative is that the violation would require a Tier 2 notice unless the primacy agency decided otherwise (as part of its approved primacy program). Another option would be to allow the primacy agency to classify monitoring and testing procedure violations as Tier 3 on a case-by-case basis. Both the proposed language and these alternatives give the primacy agency flexibility to tailor the public notice to the seriousness of the violation. The difference lies in what the default would be in the absence of action by the primacy agency. Because EPA believes that Tier 3 is appropriate for the vast majority of monitoring and testing procedure violations, the proposed rule makes Tier 3 the default.

Comments are requested on these alternative proposals for determining the proper public notice tier for monitoring and testing procedure violations.

B. Giving PWS Flexibility in Method of Delivery of Tier 2 and 3 Notices

The proposed rule would require that community water systems mail or directly deliver notices to bill-paying customers (or service connections) and use any other method reasonably calculated to reach other persons if they would not normally be reached by the mail or direct delivery requirement. The proposed rule has a parallel provision for non-community water systems, allowing posting in lieu of mail or hand delivery.

EPA discussed this provision at length with the various stakeholder

groups. EPA is asking for comment on an alternative to the proposed language that would allow the public water system to choose from a longer list of possible delivery methods. Unlike the proposal, the alternative would not require a specific method to be used by all the water systems (e.g., mail or direct delivery by all community water systems). In both the proposed language and this alternative, the water system's obligation under the rule would be the same: to take steps reasonably calculated to reach all persons served.

The advantage of this alternative is that it gives the water system a menu of methods to choose from to reach all persons served, which encourages creative and more efficient solutions than possible under the proposal. It recognizes the need to tailor the methods of delivery used to the specific situation. The disadvantage is that it sets a less precise regulatory obligation that may lead to inadequate compliance with the intent of the public notice provision. It may also be more difficult for EPA and the States to enforce this less precise requirement.

EPA is requesting comment on this alternative to the language in the proposal for delivering Tier 2 and Tier 3 notices. If the alternative is chosen in the final rule, what optional methods should EPA include in the regulatory list of acceptable delivery methods?

VII. Cost of Rule

EPA has estimated the costs for both public water systems, which must comply with the requirements of the proposed public notification rule, and the State primacy agencies, which must implement the new requirements on behalf of EPA.

For *public water systems*, the estimated costs of complying with the new regulation are divided into three component activities: notice preparation costs, notice distribution costs, and costs of repeat notices. Only public water systems with a violation or other situation requiring a public notice incur costs under this rule. Notice preparation costs include those costs that a public water system must incur to comply with the requirements regardless of how many copies of the notice it must deliver. These costs include the labor hour costs associated with becoming familiar with the requirements for the notice, collecting data regarding monitoring results and the violation, consulting with the primacy agency (when necessary), preparing the technical content of the public notification in a format suitable for distribution, identifying the recipients of the notice, and providing instructions

about production of the notice. Notice distribution costs are costs that increase or decrease along with the number of public notices to be delivered. These costs include costs of producing the reports (costs of paper, photocopying or printing, and labels), postage costs when the notice is mailed, costs of a notice in a newspaper when necessary, costs of posting notices in specified locations, and other labor hour costs of producing and delivering the notices. Repeat

notice costs involve only the costs of delivering a second copy of the notice, if the violation is not corrected within the specified time period.

For *primacy agencies*, the estimated incremental costs of implementing the new requirements are also divided into three components: costs of consulting with public water systems to clarify notice requirements on a case-by-case basis; costs of receiving and reviewing the public water system compliance

certification and copies of the notices; and costs of filing and maintaining the public notification records.

Table C provides a summary of the estimated total dollar and hour costs to public water systems and to the State primacy agencies. The public water system costs are broken out by size of the system. The combined total cost per year to both the PWS and the primacy agencies is \$17,956,117. The combined total burden hours are 972,107.

TABLE C.—AVERAGE ANNUAL COST AND LABOR HOURS FOR PUBLIC WATER SYSTEMS AND PRIMACY AGENCIES

Summary table	Total cost per year ¹	Total labor hours	Number of systems in violation ²	Labor hours per system (2)/(3)	Cost per system (1)/(3)
	(1)	(2)	(3)	(4)	(5)
Public Water Systems (PWS):					
PWS serving 25–500	\$6,867,175	686,718	40,467	16.97	\$169.70
PWS serving 501–3,300	1,804,545	146,732	4,473	32.80	403.43
PWS serving 3,301–10,000	1,266,782	36,718	912	40.26	1,389.02
PWS serv. 10,001–100,000	2,614,813	36,186	667	54.25	3,920.26
PWS serving over 100,000	3,837,948	4,634	53	87.42	72,414.11
Totals for PWS:	16,391,263	910,987	46,572	19.56	351.96
State Primacy Agencies	1,564,854	61,120	56 primacy agencies.	1,091.0 hours per primacy agency.	\$27,944.00 per primacy agency.
Totals	17,956,117	972,107			

¹ Costs include both labor hour costs and O&M costs.

² Table C–4, PWS (and Pop.) in Violation by System Size, National Public Water System Supervision Program, Draft Compliance Report, FY 1996, data for FY 1996.

The Agency estimates that the annual cost to all public water systems with one or more violations during the year is \$16,391,263, including the costs for 910,987 labor hours and the costs for postage and other related O&M costs. This is an average annual cost of \$351.96 for the 46,572 public water systems required to comply with the public notice requirements because they had one or more violations during the year. As shown in Table C, per system costs and labor hours vary most significantly by size of the water system:

- The dollar costs include both labor hour costs and non-labor costs. The non-labor costs incurred are principally to cover costs of the postage to mail the notice. Because the cost of distribution varies directly with the number of persons served, the cost per water system for the large and very large water systems is many times higher than the cost per water system for small and very small systems (e.g., \$169.70 per system serving less than 500 people vs. \$72,414.11 per system serving over 100,000).

- The labor hours vary by both the type and size of the water system. For example, a non-community water

system may post the notice, a significantly lower labor hour burden than preparing a mailing or hand delivering the notice. System size also makes a significant difference in total labor costs. The labor estimated to prepare and distribute the notice for a very small system is 14.7 hours. For very large systems, the labor hour estimate is 90.8 hours, more than six times the rate estimated for the very small systems.

The Agency estimates the annual primacy agency costs and labor hours to be \$1,564,854, and 61,120 hours. The average annual cost per primacy agency is estimated at \$27,944 per primacy agency (\$1,564,854 divided by 56) and the annual labor hours per primacy agency are estimated at 1,091 hours per primacy agency (61,120 divided by 56). This does not include the costs to EPA of implementing this regulation where EPA directly implements the regulatory program on Indian lands.

The paperwork burden associated with the existing public notification requirements in 40 CFR Part 141.32 is currently included in the baseline drinking water ICR (OMB Control No. 2040–0090, EPA ICR #270.39). The

estimated burden under ICR #270.39 is 955,191 hours, and the costs are \$21,969,393. This is the estimated cost to public water systems only, as the approved ICR did not include any incremental costs to the primacy agencies.

To estimate the *change* in the burden under the proposed rule to public water systems, EPA re-calculated the burden numbers under the current rule to provide a common basis for comparing the existing rule with the proposed rule. The existing ICR estimate could not be used as the basis of comparison because it used different lower external cost and workload assumptions. First, the cost assumptions in the current ICR used different postage and labor rates. Second, the current ICR assumes different violation levels than the proposed ICR. Third, some activities, such as repeat notices, were omitted from the current estimate.

The combined changes in burden and cost to both primacy agencies and PWSs, based on comparing the proposed rule estimate to the adjusted current rule estimate, are shown in the table below:

BURDEN AND COST ESTIMATES UNDER THE CURRENT AND PROPOSED RULES (FOR PWSS AND PRIMACY AGENCIES)

[Rounded to Nearest 10,000 for Burden Hours and Nearest \$100,000 for Cost]

	Current rule (Re-cal- culated) ¹	Proposed rule ICR	Decrease	Percent change
Burden	1,200,000	970,000	230,000	19.2
Cost	\$27,000,000	\$17,900,000	\$9,100,000	33.7

¹ To make the current rule estimate and proposed rule estimate comparable, the current rule estimate is adjusted to be the sum of the costs under the proposed rule plus the estimated cost savings that will be realized under the proposed rule.

Two programmatic changes associated with the proposed rule account for the bulk of the reduction in burden and cost estimates from the current rule.

- The proposed rule changes both the timing and method of delivery options for Tier 3 violations—

—The proposed rule would require notice within one year after the occurrence of the violation rather than within three months, as required by the current rule. Systems with monitoring and testing procedure violations occurring several times throughout the year are able under the proposed rule to consolidate their notices into one annual notice. The current rule limits the PWS's ability to combine multiple violations into a single notice to those occurring within the prior three months. For estimating the burden reduction from this change, EPA assumes that, under the current rule, systems with violations send out an average of 1.5 notices per year.

—The proposed rule allows community water systems to meet the public notice requirements for Tier 3 through the existing Consumer Confidence Report (CCR). Tier 3 violations are primarily monitoring or testing procedure violations. Systems that would otherwise incur a large labor burden and postage burden for distributing a mail notice and paying for a newspaper notice will be able to insert the text of the notice into the CCR and incur no additional costs. EPA estimates that half of all community water systems serving less than 10,000 and all community systems serving more than 10,000 will use the CCR for Tier 3 notices.

—The estimated burden reduction for the proposed changes to the timing and method of delivery for Tier 3 notices is approximately 210,000 hours (17.5 percent) and the cost reduction is approximately \$6,500,000 (24.1 percent).

- The proposed rule changes the required methods of delivery for Tiers 1 and 2 notices. The existing rule requires both newspaper and mail delivery for all tiers, although the primacy agency

may waive the mail requirement if it determines the violation has been resolved within a given time. Those systems for whom no newspaper outlet is available are allowed to hand deliver or post instead of mailing and using the newspaper. Under the current rule, systems with Tier 1 violations must also issue a notice via television or radio. The proposed rule requires only one method of delivery for Tier 2—mail or hand delivery (or posting for non-community systems). The burden reduction for Tier 2 is small, because it eliminates only newspaper notices, which are estimated to take only 1 hour of labor. For Tier 1, however, systems will have the option of issuing the notice via electronic media, hand delivery, or posting. The burden reduction resulting from the change in the Tier 1 and Tier 2 method of delivery requirements in the proposed rule would be approximately 20,000 hours (1.7 percent), and the cost reduction would be \$2,600,000 (9.6 percent).

The estimated total savings resulting from the above changes to the requirements in the proposed rule are approximately 230,000 hours (19.2 percent) and \$9,100,000 (33.7 percent).

Several caveats should be borne in mind in interpreting these cost estimates. A number of costs have been omitted from the estimates. These include costs for Tier 1 notices for waterborne disease outbreaks or other situations determined by the primacy agency to have the potential for serious adverse health impacts as a result of short-term exposure, costs for repeat notices for fecal coliform violations, costs for notices on the availability of unregulated contaminant monitoring results for systems that would not otherwise have to prepare an annual notice, costs for stuffing notices into bills, costs for air time on broadcast media if they refuse to run adequate notices as public service announcements, costs for notices that cannot be included in CCRs or customer bills because the required time frames preclude it, costs for notices associated with the recently promulgated Stage 1 Disinfectants/Disinfection Byproducts

(D/DBP) rule and the Interim Enhanced Surface Water Treatment Rule (IESWTR), and costs to States associated with adopting primacy regulations to implement the new public notification requirements. EPA is continuing to refine its cost estimates and will incorporate as many of these costs as possible into its economic analysis for the final rule.

Most of these costs have been omitted from the analysis for the proposed rule because they are not expected to be large and would not significantly change the bottom line cost and burden estimates. However, the public notification costs associated with violations of the D/DBP rule and the IESWTR may be significant. These rules contain a number of new standards as well as significant new monitoring requirements, and will require a significant capital investment from some systems. Because these two rules have not yet gone into effect, EPA has omitted the cost estimates for the proposed public notification rule. EPA does not currently have any basis on which to project the annual number of violations requiring a public notice. However, EPA recognizes that meeting the public notification requirements for these new rules could raise the costs of the current and proposed public notification rule significantly.

In considering the burden and cost reduction for the proposed rule relative to the current requirements, it is important to keep in mind that this comparison is based on assuming full compliance with both rules. In fact, as documented in the GAO report, there has been widespread non-compliance with the current requirements. EPA expects that by clarifying and streamlining these requirements, the proposed rule will result in a significantly higher level of compliance. To the extent that this occurs, there will also be an increase in State and water system resources devoted to public notification, despite the savings estimated here because of the streamlined rule that is being proposed. On the other hand, for those systems that have been complying with public

notice requirements all along, the proposed rule may result in genuine cost and burden savings.

For more information about the costs of the rule and how EPA developed the estimates, see the Supporting Statement for the EPA Information Collection Request (ICR #1898.01) and the Regulatory Flexibility Screening Analysis that EPA submitted for OMB approval. EPA is requesting comment on its cost estimates and methodology.

VIII. Other Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact or entitlement, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of the legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

There are three types of small entities under the RFA:

- A "small business" is any small business concern that is independently owned and operated and not dominant in its field as defined by the Small Business Act (15 U.S.C. 632). Public water systems within this category include privately owned community water systems, mobile home parks, and day care centers.

- A "small organization" is any not-for-profit enterprise that is independently owned and operated and not dominant in its field. Examples of water systems that are small organizations are churches, schools, and homeowners associations.

- A "small governmental jurisdiction" includes cities, counties, towns, school districts or special districts with populations of less than 50,000 (5 U.S.C. 601).

For this analysis, EPA selected systems serving 10,000 or fewer persons as the criterion for small water systems and therefore as the definition of small entity for the purposes of the RFA as amended by SBREFA. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of "small" for small businesses, governments, and non-profit organizations previously established under the RFA, EPA requested comment on an alternative definition of "small entity" in the Preamble to the proposed Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the SBA Office of Advocacy on the definition as it relates to small businesses. In the preamble to the final CCR regulation (63 FR 44511, August 19, 1998), EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it for this public notification rulemaking. Further information supporting this certification is available in the public docket for this rule.

The basis for the Administrator's certification is as follows: the annualized compliance costs of the rule represent less than one percent of annual sales for small businesses and

less than one percent of annual operating revenues for small government entities. The analyses supporting this certification are contained in the "Regulatory Flexibility Screening Analysis" prepared for this proposed rule. Each analysis compared the average estimated per-system compliance costs associated with the proposed regulation with the average estimated per-system revenues or expenditures.

The first analysis, using existing data, categorized systems as small businesses, small governments, and small organizations. Within these categories, EPA subdivided the entity categories into three size range categories: those systems serving 25–500 people; those systems serving 501–3,300 people; and those serving 3,301–10,000 people. The analysis was completed for each of the small entity types and sizes. The existing data included only CWSs and NTNCWSs. TWSs were excluded because no data were available for them on entity type. The resulting ratios ranged from less than 0.01 percent for small organization water systems serving 500 or more persons to 0.20 percent for small government systems serving 25 to 500 persons.

The second analysis categorized systems by system type (i.e., CWS, NTNCWS, and TWS), using the same three size categories as the first analysis. The resulting ratios ranged from less than 0.01 percent for non-transient non-community water systems serving less than 500 persons to 0.36 percent for transient non-community water systems serving 3,301–10,000 persons.

All system types and system size categories are well below a 1 percent impact on average. This methodology obscures to some extent the potential for impact on individual systems. For example, the average revenue for a CWS in the 25–500 size range is estimated at \$93,743 while the average compliance cost is estimated at \$183, or 0.20 percent of average revenue. Many systems in this size range have lower revenues, however, and if they had several violations in one year could have higher compliance costs. Thus, many individual systems may experience compliance costs higher than 0.20 percent of revenue.

Even so, EPA believes these potential costs are unlikely to represent a significant adverse economic impact for more than a handful of systems. The proposed rule would reduce the costs of implementation currently required for all public water systems under the existing public notification rule, even though (as discussed in Part VII) as a practical matter the actual costs

incurred will likely increase for water systems not complying with the current public notification regulations.

Since the Administrator is certifying this rule, the Agency did not prepare an RFA. Nevertheless, the Agency has conducted outreach to address the small-entity impacts that do exist and to gather information. The Agency also has structured the rule to avoid significant impacts on a substantial number of small entities by providing flexibility to public water systems on the method of delivery of the public notice and by offering all public water systems the opportunity to use an annual report of violations in lieu of individual Tier 3 notices. In addition, all community water systems are encouraged to use the CCR to meet the requirements of the public notice rule wherever appropriate. (Note that to use the CCR, many small systems would have to distribute their CCR more widely to meet the public notification distribution requirements.) Finally, small community water systems and all non-community water systems may hand deliver or post the notice in lieu of mailing, reducing substantially their overall cost of compliance with this rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1898.01) and a copy may be obtained from Sandy Farmer, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, by E-mail at farmer.sandy@epa.gov, or by calling (202) 260-2740. The supporting statement for the ICR is available for review from the EPA Docket for this rule, titled: "Supporting Statement for EPA Information Collection Request Number #1898.01, Public Water System Supervision Program Public Notification Requirements." A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. The information requirements are not effective until OMB approves them.

This information is being collected in order to fulfill the statutory requirements of section 114(c)(4) of the Safe Drinking Water Act Amendments (SDWA) of 1996 (Public Law 104-182) enacted August 6, 1996. Public notice of violations is an integral part of a number of public health protection and consumer right-to-know provisions of

the 1996 SDWA amendments. The public notification requirement is one of six interrelated provisions now included in the SDWA related to providing information to the public. Responses are mandatory. None of the information submitted under the proposed rule is confidential business information.

The burden to public water systems is based on the cost of the rule discussed under Section VII of the Preamble. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing way to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The total annual burden to both public water systems and primacy agencies is 972,107 hours at an annual cost of \$17,956,117. The cost estimate includes both the labor hour costs and the O&M costs of implementing the rule.

The annual burden to public water systems of meeting the requirements of the revised public notification rule is 910,987 hours at an annual cost of \$16,391,263. The burden estimate is the sum of the costs of three component activities: notice preparation costs; notice distribution costs; and costs of repeat notices. The costs to the public water systems include labor and non-labor costs, such as the costs of postage to mail the public notices where required. Public water systems are required to comply with the public notification rule if they have one or more violations of National Primary Drinking Water Regulations (NPDWR) or have other situations requiring a public notice. The number of public water systems estimated to have violations on an annual basis is 46,572. The annual average burden per public water system violating one or more drinking water standards is \$351.96 and 19.6 hours.

The annual burden to primacy agencies of implementing the new public notification regulations is 61,120 hours at an annual cost of \$1,564,854. The burden estimate is also the sum of three component activities: costs of consulting with public water systems;

costs of receiving and reviewing the compliance certification and notice copies received from the public water system; and the costs of filing and maintaining the public water system notification records. The costs to the primacy agency include labor costs only. Primacy agencies are required to adopt and implement the new public notification regulation as a condition of maintaining primacy. (Note that the burden to the state for adopting the regulation has not been included in the draft ICR but will be included in the ICR for the final rule.) Fifty-six States and Territories currently have primacy under the Safe Drinking Water Act. EPA directly implements the regulatory program in Wyoming, Washington, D.C., and the Indian Lands. The average annual burden for each of the 56 States and Territories with primacy to implement the proposed public notification rule is \$27,944 and 1,091 hours per primacy agency.

The paperwork burden associated with the existing public notification requirements in 40 CFR 141.32 is currently included in the baseline drinking water ICR (OMB Control No. 2040-0090, EPA ICR #270.39). The estimated burden under ICR #270.39 is 955,191 hours, and \$21,969,393. This is the estimated cost to public water systems only, as the approved ICR did not include any incremental costs to the primacy agencies.

To estimate the change in the burden under the proposed rule to public water systems, EPA re-calculated the burden numbers under the current rule to provide a common basis to compare the existing rule with the proposed rule. The existing ICR estimate could not be used as the basis of comparison because it used different lower external cost and workload assumptions.

The adjusted burden of the current rule was calculated to be approximately 1,200,000 hours and the adjusted cost was calculated at approximately \$27,000,000. The burden reduction, therefore, under the proposed rule would be approximately 230,000 hours (or 19.2 percent) and the cost reduction approximately \$9,100,000 (or 33.7 percent). Two programmatic changes associated with the proposed rule account for the bulk of the reduction in burden and cost estimates from the current rule.

- The proposed rule changes both the timing and method of delivery options for Tier 3 violations. The proposed rule would require notice within one year after the occurrence of the violation rather than within three months, as required by the current rule. Systems with monitoring and testing procedure

violations occurring several times throughout the year are able under the proposed rule to consolidate their notices into one annual notice. The proposed rule would also allow community water systems to meet the public notice requirements for Tier 3 through the existing Consumer Confidence Report (CCR). Tier 3 violations are primarily monitoring or testing procedure violations. EPA estimates that half of all community water systems serving less than 10,000 and all community systems serving more than 10,000 will use the CCR for Tier 3 notices. The estimated burden reduction for the proposed changes to the timing and method of delivery for Tier 3 notices is approximately 210,000 hours (17.5 percent) and the cost reduction is approximately \$6,500,000 (24.1 percent).

- The proposed rule changes the required methods of delivery for Tiers 1 and 2 notices. The current rule requires both newspaper and mail delivery for all tiers. Those systems for whom no newspaper outlet is available are allowed to hand deliver or post instead of mailing and using the newspaper. Under the current rule, systems with Tier 1 violations must also issue a notice via television or radio. The proposed rule requires only one method of delivery for Tier 2—mail or hand delivery (or posting for non-community systems). The burden reduction for resulting from the change in the Tier 1 and Tier 2 method of delivery requirements in the proposed rule would be approximately 20,000 hours (1.7 percent), and the cost reduction would be \$2,600,000 (9.6 percent).

Section VII of the preamble presents more detailed information on the cost of the rule. Section VII also discusses several caveats that should be borne in mind when considering these cost and burden estimates.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, D.C. 20460; and to the Office of

Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include ICR number 1898.01 in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 13, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by June 14, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and Tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

EPA has concluded that this rule will create a mandate on State, local and Tribal governments that own or operate PWSs, and that the Federal government will not provide the funds necessary to pay the direct costs incurred by the State, local and Tribal governments in complying with the mandate. In developing this rule, EPA consulted with State, local and Tribal governments to enable them to provide meaningful and timely input in the development of this rule. As described in section III of the Supplementary Information above, EPA held a series of stakeholder meetings with a wide variety of State, local, and Tribal representatives, who provided meaningful and timely input in the development of the proposed rule. The principal concerns raised by the State, local, and Tribal governments were the potential drain on their resources and the potential complexity

of the Federal rule, which would make it difficult to implement effectively. EPA believes it has addressed these concerns in the proposed regulation, which provides considerable flexibility in how the public notice is developed and what delivery mechanisms are available. The costs of the proposed regulation are less than those required for full compliance with the existing public notification rule. Summaries of the meetings have been included in the public docket for this rulemaking.

E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it impose substantial direct compliance costs on such communities. Further, the impact on Tribal governments is not unique in that this rule applies equally to all public water systems, including those owned and operated by Federal, State, and local governments. Public water systems on Indian lands incur costs under the public notification rule only if they violate a national primary drinking water regulation or have a variance or exemption from EPA. The public notification requirements will in most cases be met either through hand delivery of a single notice to all persons served or by posting the notice in conspicuous locations. Costs of meeting these requirements will be minimal. In

fact, the public notification costs resulting from this rule are less than those required for full compliance with the existing regulation. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement (including a cost-benefit analysis) for any proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule would not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The estimated cost of the proposed rule is \$34,771,019. (See section VII of the Supplementary Information.) Thus, today's rule is not subject to the requirements of sections 202 and 205 of

the UMRA. This rule will establish requirements that affect small community water systems. However, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because the regulation requires minimal expenditure of resources. In fact, the public notification costs resulting from this rule are less than those required for full compliance with the existing regulation. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

G. Environmental Justice

Pursuant to Executive Order 12898 (59 *FR* 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency believes that several of today's proposed requirements will be particularly beneficial to these communities:

- Public water systems would be required to distribute the notice to all persons served, both through the use of required delivery methods and through the use of additional measures reasonably calculated to reach other persons served, if they would not normally be reached by the required method. In addition, the notice to bill-paying customers must include standard language encouraging those receiving the public notice to make the notice available to other consumers who are not bill paying customers (e.g., renters, transients, students).
- Public notices would include information on what the consumers should do to minimize the health risk from drinking water in violation of EPA standards and on when to seek further medical advice. All notices would be required to include the name and phone number of the water system official who can provide further information.
- Public water systems would include information on the importance of the notice in a language other than English if a large proportion of the population does not speak English (as determined by the primacy agency).

H. Risk to Children Analysis

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 *FR* 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate affect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. The purpose of the proposed rule is to provide a public notice to all persons served when a violation of EPA drinking water standards occurs, to enable consumers to avoid health and safety risks from potential exposure to harmful contaminants in the drinking water. The regulation addresses the particular risks that certain contaminants may pose by considering such risks in assigning contaminants to the appropriate tier and by identifying such risks in the required health effects language, with specific reference to risks to children, where appropriate. The public notice requirements, however, apply to potential health and safety risks to all consumers and all vulnerable populations, and are not targeted specifically to address a disproportionate risk to children.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. The Agency does not believe that this proposed rule addresses any technical standards subject to the NTTAA. A commenter who disagrees with this conclusion should indicate how the rule is subject to the Act and identify any potentially applicable voluntary consensus standards.

List of Subjects**40 CFR Part 141**

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians—lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Chemicals, Indians-lands, Water supply.

Dated: April 27, 1999.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 141, 142, and 143 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300 g-3, 300g-4, 300 g-5, 300 g-6, 300 j-4, 300 j-9, and 300 j-11.

2. In part 141, the heading for subpart D is revised to read as follows:

Subpart D—Reporting and Record Keeping

3. Section 141.31 is amended by revising paragraph (d), to read as follows:

§ 141.31 Reporting requirements.

* * * * *

(d) The public water system, within 10 days of completion of each public notice required pursuant to subpart Q of this part, must submit to the primacy agency a certification that all public notification requirements have been met and must include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

* * * * *

4. Section 141.32 is amended by revising the introductory paragraph, to read as follows:

§ 141.32 Public notification.

The requirements in this section apply until the requirements of Subpart Q of this part become effective. For public water systems where EPA directly implements the public water

system supervision program, the requirements in Subpart Q of this part will become effective on [date 90 days after publication of the final rule in the **Federal Register**]. For all other public water systems, the requirements in Subpart Q of this part will become effective on [date two years after publication of the final rule in the **Federal Register**] or the date the State-adopted rule becomes effective, whichever comes first.

* * * * *

5. Section 141.33 is amended by adding paragraph (e), to read as follows:

§ 141.33 Record maintenance.

* * * * *

(e) Copies of public notices issued pursuant to subpart Q of this part and certifications made to the primacy agency pursuant to § 141.31 must be kept for three years after issuance.

§ 141.35 [Amended]

6. Section 141.35 is amended by removing paragraph (d).

7. Part 141 is amended by adding subpart Q, to read as follows:

Subpart Q—Public Notification of Drinking Water Violations

Sec.

141.201 General public notification requirements.

141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.

141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

141.204 Tier 3 Public Notice—Form, manner, and frequency of notice.

141.205 Content of the public notice.

141.206 Notice to new billing units or new customers.

141.207 Special notice of the availability of unregulated contaminant monitoring results.

141.208 Special notice for exceedance of the SMCL for fluoride.

141.209 Notice by primacy agency on behalf of the public water system.

Appendix A to Subpart Q of Part 141—NPDWR Violations and Situations Requiring Public Notice

Appendix B to Subpart Q of Part 141—Standard Health Effects Language for Public Notification

Appendix C to Subpart Q of Part 141—List of Acronyms Used in Public Notification Regulation

Subpart Q—Public Notification of Drinking Water Violations**§ 141.201 General public notification requirements.**

The requirements in this subpart are effective no later than [date two years after publication of the final rule in the **Federal Register**] or on the date the State-adopted rule becomes effective, whichever comes first. For public water systems where EPA directly implements

the public water system supervision (PWSS) program (i.e., Indian lands, Wyoming, Washington, D.C.), the requirements in this section are effective 90 days after publication of the final rule in the **Federal Register**.

(a) *Who must give public notice?* Each owner or operator of a public water system (community water systems, non-transient non-community water systems, and transient non-community water systems) must give notice for all violations of national primary drinking water regulations (NPDWR) and for other situations, as listed in Table 1 of this section. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.201.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A PUBLIC NOTICE

- (1) NPDWR violations (MCL, MRDL, treatment technique, monitoring and testing procedure)
 - (i) Failure to comply with an applicable maximum contaminant level (MCL) or maximum residual disinfectant level (MRDL).
 - (ii) Failure to comply with a prescribed treatment technique (TT).
 - (iii) Failure to perform water quality monitoring, as required by the regulations.
 - (iv) Failure to comply with testing procedures as prescribed by a drinking water regulation.
- (2) Variance and exemptions under sections 1415 and 1416 of SDWA
 - (i) Operation under a variance or an exemption.
 - (ii) Failure to comply with the requirements of any schedule that has been set under a variance or exemption.
- (3) Special public notices
 - (i) Occurrence of a waterborne disease outbreak. Exceedance of the secondary maximum contaminant level (SMCL) for fluoride. Availability of unregulated contaminant monitoring data. Other situations determined by the primacy agency to have a potential for serious adverse effects on human health.

(b) *What type of public notice is required for each violation or situation?* Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. The public notice requirements for each violation or situation listed in Table 1 of this section are determined by the tier to which it is assigned. Table 2 of this section provides the definition of each tier. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 2 TO § 141.201—DEFINITION OF PUBLIC NOTICE TIERS

- (1) *Tier 1 public notice*—required for NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.
- (2) *Tier 2 public notice*—required for all other NPDWR violations and situations with potential to have serious adverse effects on human health.
- (3) *Tier 3 public notice*—required for all other NPDWR violations and situations not included in Tier 1 and Tier 2.

(c) *Who must be notified?* Each public water system must provide public notice to persons served by the water system, in accordance with this subpart. A copy of the notice must also be sent to the primacy agency, in accordance with the requirements under § 141.31(d).

§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.

(a) *Which violations or situations require a Tier 1 public notice?* Table 1 of this section lists the violation categories and other situations requiring a Tier 1 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.202.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE

- (1) Violation of the MCL for total coliforms, when fecal coliform or *E. coli* are present in the water distribution system (as specified in § 141.63(b)), or failure to test for fecal coliforms or *E. coli* after the presence of coliform bacteria in the water distribution system is confirmed (as specified in § 141.21(e));
- (2) Violation of the MCL for nitrate, nitrite, or combined nitrate+nitrite, as defined in § 141.62;
- (3) Violation of the MRDL for chlorine dioxide, when one or more repeat samples taken in the distribution system exceed the MRDL, or when required repeat samples are not taken in the distribution system, as defined in § 141.65(a);
- (4) Occurrence of a waterborne disease outbreak, as defined in § 141.2; and
- (5) Other violations or situations with potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the primacy agency either in its regulations or on a case-by-case basis.

(b) *When is the Tier 1 public notice to be provided? What additional steps are required?*

Public water systems must:

- (1) Provide a public notice as soon as practicable but no later than 24 hours after the system learns of the violation;
- (2) Initiate consultation with the primacy agency as soon as practicable, but no later than 24 hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and
- (3) Comply with any additional public notification requirements (including any repeat notices) that are established as a result of the consultation with the primacy agency. Such requirements may include the timing, form, manner, frequency, and content of repeat notices (if any) and other actions designed to reach all persons served.

(c) *What is the form and manner of the public notice?* Public water systems must provide the notice in a form and manner reasonably calculated to reach all persons served within 24-hours. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and non-transient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one or more of the following forms of delivery:

- (1) Appropriate broadcast media (such as radio and television);
- (2) Posting of the notice in conspicuous locations; or
- (3) Hand delivery of the notice to persons served by the water system.

§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

(a) *Which violations or situations require a Tier 2 public notice?* Table 1 of this section lists the violation categories and other situations requiring a Tier 2 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.203.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 2 PUBLIC NOTICE

- (1) All violations of the MCL, MRDL, and treatment technique requirements not included in the Tier 1 notice category;
- (2) Violations of the monitoring and testing procedure requirements, where the primacy agency determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; and

TABLE 1 TO § 141.203.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 2 PUBLIC NOTICE—Continued

- (3) Failure to comply with the terms and conditions of any variance or exemption in place.

(b) *When is the Tier 2 public notice to be provided?* Public water systems must provide the public notice as soon as practicable, but no later than 30 days after the system learns of the violation. The primacy agency may allow additional time in specific circumstances of up to three months from the date the system learns of the violation. The public water system must repeat the notice every three months, unless the primacy agency determines that specific circumstances warrant a different repeat notice frequency. In no circumstance will the repeat notice be less frequent than once per year. If the public notice is posted, the notice must remain in place for as long as the violation or situation exists.

(c) *What is the form and manner of the Tier 2 public notice?* Public water systems must provide the notice in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(1) Unless directed otherwise by the primacy agency, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill or other service connections; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of this section. Such methods may include: publication in a local newspaper; delivery of multiple copies for distribution by single-biller customers (e.g., apartment buildings or large private employers); posting in public places or on the Internet; or delivery to community organizations.

(2) Unless directed otherwise by the primacy agency, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations frequented by persons served by the system, or by mail or direct delivery to each customer (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system if they would not

normally be reached by the notice required in paragraph (c)(2)(i) of this section. Such methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

§ 141.204 Tier 3 Public Notice—Form, manner, and frequency of notice.

(a) *Which violations or situations require a Tier 3 public notice?* Table 1 of this section lists the violation categories and other situations requiring a Tier 3 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.204.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 3 PUBLIC NOTICE

- (1) Monitoring violations under 40 CFR part 141, unless the primacy agency determines that the violation requires a Tier 2 notice;
- (2) Failure to comply with a testing procedure established in 40 CFR part 141;
- (3) Operation under a variance granted under section 1415 or exemption granted under section 1416 of the Act; and
- (4) Any other violations and situations determined by the primacy agency to require a Tier 3 public notice.

(b) *When is the Tier 3 public notice to be provided?* (1) Public water systems must provide the public notice not later than one year after the public water system learns of the violation or begins operating under a variance or exemption. Following the initial notice, the public water system must repeat the notice annually for as long as the violation, variance, exemption, or other situation exists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation exists.

(2) Instead of individual public notices, a public water system may use an annual report summarizing all violations occurring during the previous twelve months to meet the requirements of paragraph (b)(1) of this section.

(c) *What is the form and manner of the Tier 3 public notice?* Public water systems must provide the notice in a form and manner that is reasonably calculated to reach all persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a

minimum meet the following requirements:

(1) Unless directed otherwise by the primacy agency, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill or other service connections; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of this section. Such methods may include: publication in a local newspaper; delivery of multiple copies for distribution by single-biller customers (e.g., apartment buildings or large private employers); posting in public places or on the Internet; or delivery to community organizations.

(2) Unless directed otherwise by the primacy agency, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations frequented by persons served by the system, or by mail or direct delivery to each customer (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in paragraph (c)(2)(i) of this section. Such methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

(d) *In what situations may the Consumer Confidence Report be used to meet the Tier 3 public notice requirements?* For community water systems, the Consumer Confidence Report (CCR) required under subpart O of this part may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as the CCR is provided to all persons served no later than 12 months after the system learns of the violation and as long as the CCR follows the form, manner, and content requirements of this section.

§ 141.205 Content of the public notice.

(a) *What elements must be included in the public notice for violations of National Primary Drinking Water Regulations (NPDWR), including the monitoring and testing procedure requirements?* When a public water system violates an NPDWR, each public notice must include the following elements:

(1) A description of the violation, including the contaminant of concern,

and (as applicable) the contaminant level;

(2) When the violation occurred;

(3) Any potential adverse health effects from the violation, including the standard language under paragraph (d)(1) or (d)(2) of this section, whichever is applicable;

(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(5) Whether alternative water supplies should be used;

(6) What actions consumers should take, including when they should seek medical help, if known;

(7) What the system is doing to correct the violation;

(8) When the water system expects to return to compliance;

(9) The phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and

(10) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (d)(3) of this section.

(b) *What elements must be included in the public notice for public water systems operating under a variance or exemption?* (1) If a public water system has been granted a variance or an exemption, the public notice must contain:

(i) An explanation of the reasons for the variance or exemption;

(ii) The date on which the variance or exemption was issued;

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(iv) A notice of any opportunity for public input in the review of the variance or exemption.

(2) If a public water system violates the conditions of a variance or exemption, the public notice must contain the ten elements listed in paragraph (a) of this section.

(c) *How is the public notice to be presented?* (1) Each public notice required by this section:

(i) Must be displayed in a

conspicuous way (where applicable);

(ii) Must not contain overly technical language or very small print;

(iii) Must not be formatted in a way that defeats the purpose of the notice;

(iv) Must not contain language which nullifies the purpose of the notice.

(2) For public water systems serving a large proportion of non-English

speaking consumers, as determined by the primacy agency, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

(d) *What standard language must public water systems include in their public notice?* Public water systems are required to include the following standard language in their public notice:

(1) *Standard health effects language for MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption.* Public water systems must include in each public notice the health effects language specified in Appendix B to this subpart corresponding to each MCL, MRDL, and treatment technique violation listed in Appendix A to this subpart, and for each violation of a condition of a variance or exemption.

(2) *Standard language for monitoring and testing procedure violations.* Public water systems must include the following language in their notice for all monitoring and testing procedure violations listed in Appendix A to this subpart:

Because we ["did not monitor or test" or "failed to monitor or test completely"] during [compliance period], we do not know whether the contaminant was present in your drinking water during that time period, and we are unable to tell whether your health was at risk during that time.

(3) *Standard language to encourage the distribution of the public notice to all persons served.* Public water systems must include in or attach to their notice the following language:

If other people receive water from you, such as tenants, residents, patients, students, or employees, it is important that you provide this notice to them by posting it in a conspicuous location or by direct hand or mail delivery.

§ 141.206 Notice to new billing units or new customers.

(a) *What is the requirement for community water systems?* Community

water systems must give a copy of the most recent public notice for any continuing violation or the existence of a variance or exemption to all new billing units or new hookups prior to or at the time service begins.

(b) *What is the requirement for non-community water systems?* Non-community water systems must continuously post the public notice in a conspicuous place in order to inform new consumers of any continuing violation, variance, or exemption for as long as the violation exists.

§ 141.207 Special notice of the availability of unregulated contaminant monitoring results.

(a) *When is the special notice to be given?* The owner or operator of a community water system or non-transient, non-community water system required to monitor under § 141.40 must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

(b) *What is the form and manner of the special notice?* The form and manner of the public notice must follow the requirements for a Tier 3 public notice prescribed in §§ 141.204(c) and (d). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

§ 141.208 Special notice for exceedance of the SMCL for fluoride.

(a) *When is the special notice to be given?* Community water systems that exceed the secondary maximum contaminant level (SMCL) for fluoride as determined by the last single sample taken in accordance with § 141.23, but do not exceed the maximum contaminant level for fluoride as specified in § 141.62, must provide the public notice in paragraph (c) of this section to all persons served. Public notice must be provided as soon as practicable but no later than 12 months from the day the water system learns of the exceedance.

(b) *What is the form and manner of the special notice?* The form and manner of the public notice (including

repeat notices) must follow the requirements for a Tier 3 public notice in §§ 141.204(c) and (d).

(c) *What mandatory language must be contained in the special notice?* The notice must contain the following language, including the language necessary to fill in the blanks:

The drinking water provided by [name of community water system] has a fluoride concentration of [insert value] milligrams per liter (mg/l). Although your drinking water does not violate the drinking water standard of 4 mg/l for fluoride, the U.S. Environmental Protection Agency requires us to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l. This is to alert you about a cosmetic dental problem that might affect children under nine years old.

Fluoride at lower levels helps prevent cavities. However, children drinking water containing fluoride at the levels present in your drinking water may develop dental fluorosis. Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums.

Children under nine should be provided with alternative sources of drinking water to avoid the possibility of staining and pitting of their permanent teeth. Older children and adults may safely drink the water.

For more information and to learn about available water treatment systems, please call [name of water system contact] of [name of community water system] at [phone number].

§ 141.209 Notice by primacy agency on behalf of the public water system.

(a) *When may the primacy agency give the notice on behalf of the public water system?* The primacy agency may give the notice required by this subpart on behalf of the owner and operator of the public water system if the primacy agency complies with the requirements of this subpart.

(b) *What is the responsibility of the public water system when notice is given by the primacy agency?* The owner or operator of the public water system remains legally responsible for ensuring that the requirements of this subpart are met.

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE¹
(INCLUDING D/DBP AND IESWTR VIOLATIONS)

Contaminant	MCL/MRDL/TT violations ²		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR):³				
Microbiological Contaminants				
Total coliform	2	141.63(a)	3	141.21(a–d)
Fecal coliform/ <i>E. coli</i>	1	141.63(b)	1	141.21(e)
Turbidity	2	141.13, 141.71(c)	3	141.22
Surface Water Treatment Rule violations	2	141.70–141.73	3	141.74
Interim Enhanced Surface Water Treatment Rule violations	2	141.170–141.173 ⁴	3	141.172, 141.174
Inorganics				
Antimony	2	141.62(b)	3	141.23(a, c)
Arsenic	2	141.11(b), 141.23(n) ..	3	141.23(a, l, m)
Asbestos (fibers >10 µm)	2	141.62(b)	3	141.23(a–b)
Barium	2	141.62(b)	3	141.23(a, c)
Beryllium	2	141.62(b)	3	141.23(a, c)
Cadmium	2	141.62(b)	3	141.23(a, c)
Chromium (total)	2	141.62(b)	3	141.23(a, c)
Cyanide	2	141.62(b)	3	141.23(a, c)
Fluoride	2	141.62(b)	3	141.23(a, c)
Mercury (inorganic)	2	141.62(b)	3	141.23(a, c)
Nitrate	1	141.62(b)	3	141.23(a, d), 141.23(f)(2)
Nitrite	1	141.62(b)	3	141.23(a, e), 141.23(f)(2)
Nitrate+Nitrite	1	141.62(b)	3	141.23(a)
Selenium	2	141.62(b)	3	141.23(a, c)
Thallium	2	141.62(b)	3	141.23(a, c)
Lead and Copper Rule (Action Level for lead is 0.015 mg/L, for copper is 1.3 mg/L)				
Lead and Copper Rule	2	141.80–141.85	3	141.86–141.89
Synthetic Organic Chemicals (VOCS)				
2,4-D	2	141.61(c)	3	141.24(h)
2,4,5-TP (Silvex)	2	141.61(c)	3	141.24(h)
Alachlor	2	141.61(c)	3	141.24(h)
Atrazine	2	141.61(c)	3	141.24(h)
Benzo(a)pyrene (PAHs)	2	141.61(c)	3	141.24(h)
Carbofuran	2	141.61(c)	3	141.24(h)
Chlordane	2	141.61(c)	3	141.24(h)
Dalapon	2	141.61(c)	3	141.24(h)
Di (2-ethylhexyl) adipate	2	141.61(c)	3	141.24(h)
Di (2-ethylhexyl) phthalate	2	141.61(c)	3	141.24(h)
Dibromochloropropane	2	141.61(c)	3	141.24(h)
Dinoseb	2	141.61(c)	3	141.24(h)
Dioxin (2,3,7,8-TCDD)	2	141.61(c)	3	141.24(h)
Diquat	2	141.61(c)	3	141.24(h)
Endothall	2	141.61(c)	3	141.24(h)
Endrin	2	141.61(c)	3	141.24(h)
Ethylene dibromide	2	141.61(c)	3	141.24(h)
Glyphosate	2	141.61(c)	3	141.24(h)
Heptachlor	2	141.61(c)	3	141.24(h)
Heptachlor epoxide	2	141.61(c)	3	141.24(h)
Hexachlorobenzene	2	141.61(c)	3	141.24(h)
Hexachlorocyclopentadiene	2	141.61(c)	3	141.24(h)
Lindane	2	141.61(c)	3	141.24(h)
Methoxychlor	2	141.61(c)	3	141.24(h)
Oxamyl (Vydate)	2	141.61(c)	3	141.24(h)
Pentachlorophenol	2	141.61(c)	3	141.24(h)
Picloram	2	141.61(c)	3	141.24(h)
Polychlorinated biphenyls (PCBs)	2	141.61(c)	3	141.24(h)
Simazine	2	141.61(c)	3	141.24(h)
Toxaphene	2	141.61(c)	3	141.24(h)

**APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE¹
(INCLUDING D/DBP AND IESWTR VIOLATIONS)—Continued**

Contaminant	MCL/MRDL/TT violations ²		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Volatile Organic Chemicals (VOCs)				
Benzene	2	141.61(a)	3	141.24(f)
Carbon tetrachloride	2	141.61(a)	3	141.24(f)
Chlorobenzene (monochlorobenzene)	2	141.61(a)	3	141.24(f)
<i>o</i> -Dichlorobenzene	2	141.61(a)	3	141.24(f)
<i>p</i> -Dichlorobenzene	2	141.61(a)	3	141.24(f)
1,2-Dichloroethane	2	141.61(a)	3	141.24(f)
1,1-Dichloroethylene	2	141.61(a)	3	141.24(f)
<i>cis</i> -1,2-Dichloroethylene	2	141.61(a)	3	141.24(f)
<i>trans</i> -1,2-Dichloroethylene	2	141.61(a)	3	141.24(f)
Dichloromethane	2	141.61(a)	3	141.24(f)
1,2-Dichloropropane	2	141.61(a)	3	141.24(f)
Ethylbenzene	2	141.61(a)	3	141.24(f)
Styrene	2	141.61(a)	3	141.24(f)
Tetrachloroethylene	2	141.61(a)	3	141.24(f)
Toluene	2	141.61(a)	3	141.24(f)
1,2,4-Trichlorobenzene	2	141.61(a)	3	141.24(f)
1,1,1-Trichloroethane	2	141.61(a)	3	141.24(f)
1,1,2-Trichloroethane	2	141.61(a)	3	141.24(f)
Trichloroethylene	2	141.61(a)	3	141.24(f)
Vinyl chloride	2	141.61(a)	3	141.24(f)
Xylenes (total)	2	141.61(a)	3	141.24(f)
Radioactive Contaminants				
Beta/photon emitters	2	141.16	3	141.25(a), 141.26(b)
Alpha emitters	2	141.15(b)	3	141.25(a), 141.26(a)
Combined radium (226 & 228)	2	141.15(a)	3	141.25(a), 141.26(a)
Disinfection Byproducts (DBPs), Byproduct Precursors, Disinfectant Residuals. Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA also sets standards for controlling the levels of disinfectants and DBPs in drinking water, which includes trihalomethanes (THMs) and haloacetic acids (HAAs).⁵				
Total trihalomethanes (TTHMs)	2	141.12, ⁶ 141.64(a)	3	141.30, 141.132(a-b)
—Chloroform				
—Bromodichloromethane				
—Dibromochloromethane				
—Bromoform				
Haloacetic Acids (HAA5)	2	141.64(a)	3	141.132(a-b)
—Monochloroacetic acid				
—Dichloroacetic acid				
—Trichloroacetic acid				
—Monobromoacetic acid				
Bromate	2	141.64(a)	3	141.132(a-b)
Chlorite	2	141.64(a)	3	141.132(a-b)
Chlorine (MRDL)	2	141.65(a)	3	141.132(a, c)
Chloramine (MRDL)	2	141.65(a)	3	141.132(a, c)
Chlorine dioxide (MRDL), ≥2 consecutive samples at entry point only are above MRDL	2	141.65(a), 141.133(c)(2).	3	141.132(a, c), 141.133(c)(2)
Chlorine dioxide (MRDL), sample(s) in distribution system above MRDL	1	141.65(a), 141.133(c)(2).	1	141.132(a, c), 141.133(c)(2)
Control of DBP precursors—TOC (TT)	2	141.135(a-b)	3	141.132(a, d)
Bench marking and disinfection profiling	N/A	N/A	3	141.172
Development of monitoring plan	N/A	N/A	3	141.132(f)
Other Treatment Techniques				
Acrylamide (TT)	2	141.111	N/A	N/A
Epichlorohydrin (TT)	2	141.111	N/A	N/A
II. Unregulated Contaminant Monitoring Results⁷				
Unregulated contaminants	N/A	N/A	3	141.40

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE¹
(INCLUDING D/DBP AND IESWTR VIOLATIONS)—Continued

Contaminant	MCL/MRDL/TT violations ²		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Nickel	N/A	N/A	3	141.23(c, k)
III. Public Notification for Variances and Exemptions				
Operation under a variance or exemption	3	1415, 1416 ⁸	N/A	N/A
Violation of conditions of a variance or exemption	2	1415, 1416	N/A	N/A
IV. Other Situations Requiring Public Notification				
Fluoride secondary maximum contaminant level (SMCL) exceedance.	3	143.3	N/A	N/A
Availability of unregulated contaminant monitoring data	3	141.40	N/A	N/A
Waterborne disease outbreak	1	141.2, 141.71(c)(2)(ii)	N/A	N/A
Other situations as determined by primacy agency	(⁹)	N/A	N/A	N/A

Appendix A Endnotes

1. Violations and other situations not listed in this table do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may move violations requiring public notice to a higher tier as well (e.g., Tier 3 to Tier 2).

2. MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique.

3. The term *Violations of National Primary Drinking Water Regulations (NPDWR)* is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

4. Most of the requirements of the Interim Enhanced Surface Water Treatment Rule (63 FR 69477) (§§ 141.170–141.171, 141.73–

141.174) become effective December 16, 2001 for Subpart H systems (surface water systems and ground water systems under the direct influence of surface water) serving more than 10,000. The Surface Water Treatment Rule (§§ 141.70–141.73, 141.74) remains in effect for these systems until that time. However, § 141.172 has some requirements that become effective as soon as April 16, 1999.

5. Subpart H community and non-transient non-community systems serving ≥10,000 must comply with new DBP MCLs, disinfectant MRDLs, and related monitoring requirements beginning December 16, 2001. All other community and non-transient non-community systems must meet the MCLs and MRDLs beginning December 16, 2003.

6. § 141.12 will no longer apply after December 16, 2003.

7. Monitoring is currently required for 34 unregulated contaminants listed in § 141.40. These include aldicarb, aldicarb sulfone, and aldicarb sulfoxide.

8. This citation refers to sections 1415 and 1416 of the Safe Drinking Water Act. There are no regulations requiring water systems to comply with the conditions of a variance or exemption. However, sections 1415 and 1416 require that “a schedule prescribed * * * for a public water system granted a variance [or exemption] shall require compliance by the system * * *”

9. Primacy agencies may place other situations in any tier they believe appropriate, based on threat to public health.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG ¹ mg/L	MCL ² mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR)			
Microbiological Contaminants			
1a. Total coliform	Zero	Presence ³	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
1b. Fecal coliform/ <i>E. coli</i>	Zero	Presence	Fecal coliforms and <i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.
2. Turbidity	None	1 NTU ^{4/5} NTU ⁵	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—
Continued

Contaminant	MCLG ¹ mg/L	MCL ² mg/L	Standard health effects language for public notification
Interim Enhanced Surface Water Treatment Rule (IESWTR) violations: 3. <i>Giardia lamblia</i> 4. Viruses 5. Heterotrophic plate count (HPC) bacteria ⁶ 6. <i>Legionella</i> 7. <i>Cryptosporidium</i>	Zero	TT ⁷	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. ⁸

Inorganics

8. Antimony	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
9. Arsenic	None	0.05	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
10. Asbestos (>10 µm)	7 MFL ⁹	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
11. Barium	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
12. Beryllium	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
13. Cadmium	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
14. Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
15. Cyanide	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
16. Fluoride	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.
17. Mercury (inorganic)	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
18. Nitrate	10	10	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.
19. Nitrite	1	1	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.
20. Nitrate+Nitrite	10	10	Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
21. Selenium	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
22. Thallium	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

Lead and Copper Rule

23. Lead	Zero	TT ¹⁰	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
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APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—
Continued

Contaminant	MCLG ¹ mg/L	MCL ² mg/L	Standard health effects language for public notification
24. Copper	1.3	TT ¹¹	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Synthetic Organic Compounds			
25. 2,4-D	0.07	0.07	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
26. 2,4,5-TP (Silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
27. Alachlor	Zero	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, experience anemia, or may have an increased risk of getting cancer.
28. Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
29. Benzo(a)pyrene (PAHs)	Zero	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties or may have an increased risk of getting cancer.
30. Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
31. Chlordane	Zero	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver, or nervous system, and may have an increased risk of getting cancer.
32. Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
33. Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
34. Di(2-ethylhexyl) phthalate	Zero	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
35. Dibromochloropropane (DBCP) ..	Zero	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
36. Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
37. Dioxin (2,3,7,8-TCDD)	Zero	3×10 ⁻⁸	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
38. Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
39. Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
40. Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
41. Ethylene dibromide	Zero	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
42. Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
43. Heptachlor	Zero	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
44. Heptachlor epoxide	Zero	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—
Continued

Contaminant	MCLG ¹ mg/L	MCL ² mg/L	Standard health effects language for public notification
45. Hexachlorobenzene	Zero	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
46. Hexachlorocyclopentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
47. Lindane	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
48. Methoxychlor	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
49. Oxamyl (Vydate)	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
50. Pentachlorophenol	Zero	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
51. Picloram	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
52. Polychlorinated biphenyls (PCBs)	Zero	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
53. Simazine	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
54. Toxaphene	Zero	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

Volatile Organic Chemicals

55. Benzene	Zero	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
56. Carbon tetrachloride	Zero	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
57. Chlorobenzene (monochlorobenzene)	0.1	0.1	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
58. <i>o</i> -Dichlorobenzene	0.6	0.6	Some people who drink water containing <i>o</i> -dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
59. <i>p</i> -Dichlorobenzene	0.075	0.075	Some people who drink water containing <i>p</i> -dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
60. 1,2-Dichloroethane	Zero	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
61. 1,1-Dichloroethylene	0.007	0.007	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
62. <i>cis</i> -1,2-Dichloroethylene	0.07	0.07	Some people who drink water containing <i>cis</i> -1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
63. <i>trans</i> -1,2-Dichloroethylene	0.1	0.1	Some people who drink water containing <i>trans</i> -1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
64. Dichloromethane	Zero	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
65. 1,2-Dichloropropane	Zero	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
66. Ethylbenzene	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—
Continued

Contaminant	MCLG ¹ mg/L	MCL ² mg/L	Standard health effects language for public notification
67. Styrene	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
68. Tetrachloroethylene	Zero	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
69. Toluene	1	1	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
70. 1,2,4-Trichlorobenzene	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
71. 1,1,1-Trichloroethane	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
72. 1,1,2-Trichloroethane	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
73. Trichloroethylene	Zero	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
74. Vinyl chloride	Zero	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
75. Xylenes (total)	10	10	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

Radioactive Contaminants

76. Beta/photon emitters	Zero	4 mrem/yr ¹²	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
77. Alpha emitters	Zero	15 pCi/L ¹³	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
78. Combined radium (226 & 228) ...	Zero	5 pCi/L	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

Disinfection Byproducts (DBPs), Byproduct Precursors, and Disinfectant Residuals: Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA also sets standards for controlling the levels of disinfectants and DBPs in drinking water, which include trihalomethanes (THMs) and haloacetic acids (HAAs).¹⁴

79. Total trihalomethanes (TTHMs) ..		0.10/	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
—Chloroform	Zero ¹⁵	0.080 ^{16 17}	
—Bromodichloromethane	Zero		
—Dibromochloromethane	0.06		
—Bromoform	Zero		
80. Haloacetic Acids (HAA5)		0.060 ¹⁸	Some people who drink water containing HAAs in excess of the MCL over many years may have an increased risk of developing cancer.
—Monochloroacetic acid	None		
—Dichloroacetic acid	Zero		
—Trichloroacetic acid	0.3		
—Monobromoacetic acid	None		
—Dibromoacetic acid	None		Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of developing cancer.
81. Bromate	Zero	0.010	
82. Chlorite	0.08	1.0	
83. Chlorine	4 (MRDLG) ¹⁹	4.0 (MRDL) ²⁰	Some people who contact drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—
Continued

Contaminant	MCLG ¹ mg/L	MCL ² mg/L	Standard health effects language for public notification
84. Chloramines	4 (MRDLG)	4.0 (MRDL)	Some people who contact drinking water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
85a. Chlorine dioxide, >2 consecutive samples at entry point only are above MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
85b. Chlorine dioxide, sample(s) in distribution system are above MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
86. Control of DBP precursors (TOC).	None	TT	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs), which may lead to adverse health effects, liver or kidney problems, or nervous system effects.
Other Treatment Techniques			
87. Acrylamide	Zero	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
88. Epichlorohydrin	Zero	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

Appendix B Endnotes

1. MCLG—Maximum contaminant level goal.
2. MCL—Maximum contaminant level.
3. For water systems analyzing at least 40 samples per month, no more than 5.0 percent of the monthly samples may be positive for total coliforms. For systems analyzing fewer than 40 samples per month, no more than one sample per month may be positive for total coliforms.
4. NTU—Nephelometric turbidity unit.
5. The MCL for the monthly turbidity average is 1 NTU; the MCL for the 2-day average is 5 NTU. The standard language for turbidity may also be used where a turbidity exceedance is the reason for a treatment technique violation.
6. The bacteria detected by HPC are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.
7. TT—Treatment technique.

8. This language may be used for both SWTR and IESWTR violations.
9. Millions of fibers per liter.
10. Action Level=0.015 mg/L.
11. Action Level=1.3 mg/L.
12. Millirems per year.
13. Picocuries per liter.
14. Surface water systems and ground water systems under the direct influence of surface water are regulated under Subpart H of 40 CFR part 141. Subpart H community and non-transient non-community systems serving ≥10,000 must comply with DBP MCLs and disinfectant maximum residual disinfectant levels (MRDLs) beginning December 16, 2001. All other community and non-transient noncommunity systems must meet the MCLs and MRDLs beginning December 16, 2003.
15. The MCLG for chloroform may change if the final DBP rule changes.
16. The MCL of 0.10 mg/l for TTHMs is in effect until December 16, 2001 for Subpart H community water systems larger than 10,000. This MCL is in effect until December 16, 2003 for community water systems with a population larger than 10,000 using only

ground water not under the direct influence of surface water. After these deadlines, the MCL will be 0.080 mg/l. On December 16, 2003, all systems serving less than 10,000 will have to comply with the new MCL as well.

17. The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.

18. The MCL for haloacetic acids is the sum of the concentrations of the individual haloacetic acids.

19. MRDLG—Maximum residual disinfectant level goal.

20. MRDL—Maximum residual disinfectant level.

Appendix C to Subpart Q of Part 141, List of Acronyms Used in Public Notification Regulation

CCR Consumer Confidence Report
CWS Community Water System
DBP Disinfection Byproduct
EPA Environmental Protection Agency
IESWTR Interim Enhanced Surface Water Treatment Rule
IOC Inorganic Chemical

LCR Lead and Copper Rule
 MCL Maximum Contaminant Level
 MCLG Maximum Contaminant Level Goal
 MRDL Maximum Residual Disinfectant Level
 NCWS Non-Community Water System
 NPDWR National Primary Drinking Water Regulation
 NTNCWS Non-Transient Non-Community Water System
 OGDW Office of Ground Water and Drinking Water
 OW Office of Water
 PN Public Notification
 PWS Public Water System
 SDWA Safe Drinking Water Act
 SMCL Secondary Maximum Contaminant Level
 SOC Synthetic Organic Chemical
 SWTR Surface Water Treatment Rule
 TCR Total Coliform Rule
 TT Treatment Technique
 TWS Transient Non-Community Water System
 VOC Volatile Organic Chemical

PART 142—[AMENDED]

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300 g-3, 300g-4, 300 g-5, 300 g-6, 300 j-4, 300 j-9, and 300 j-11.

2. Section 142.14 is amended by redesignating paragraph (f) as (g) and adding a new (f), to read as follows:

§ 142.14 Records kept by States.

* * * * *

(f) Public notification records under subpart Q of part 141 of this chapter received from public water systems (including the certifications of compliance and copies of the public notices) and any state determinations establishing alternative public notification requirements for the water systems must be retained for three years.

* * * * *

3. Section 142.15 is amended by revising paragraph (a)(1), to read as follows:

§ 142.15 Reports by States.

(a) * * *

(1) New violations by public water systems in the State during the previous quarter of State regulations adopted to incorporate the requirements of national primary drinking water regulations, including violations of the public notification requirements under subpart Q of part 141 of this chapter;

* * * * *

4. Section 142.16 is amended by revising paragraph (a), to read as follows:

§ 142.16 Special primacy requirements.

(a) *State public notification requirements.* (1) Each State that has primary enforcement authority under this part must submit complete and final requests for approval of program revisions to adopt the requirements of subpart Q of part 141 of this chapter, using the procedures in § 142.12(b) through (d).

(2) As part of the revised primacy program, a State must also establish enforceable requirements and procedures when the State opts to add to or change the minimum requirements under:

(i) *40 CFR 141.201(a)*—To require public water systems to give a public notice for situations other than those listed in appendix A of subpart Q of part 141 of this chapter, where the State determines that the situation has the potential for serious adverse effects on human health;

(ii) *40 CFR 141.202(a)*—To require public water systems to give a Tier 1 public notice (rather than a Tier 2 or Tier 3 notice) for violations or situations other than those listed in appendix A of subpart Q of part 141 of this chapter;

(iii) *40 CFR 141.202(b)(3)*—To require public water systems to comply with additional Tier 1 public notification requirements set by the State subsequent to the initial 24-hour notice, as a result of their consultation with the

State required under § 141.202(b)(2) of this chapter;

(iv) *40 CFR 141.203(a)*—To require the public water systems to provide a Tier 2 public notice (rather than Tier 3) for monitoring or testing procedure violations specified by the State;

(v) *40 CFR 141.203(b)*—To grant public water systems an extension of time (up to three months) for distributing the Tier 2 public notice, under specific circumstances defined in the State's primacy program;

(vi) *40 CFR 141.203(b)*—To require a different repeat notice frequency for the Tier 2 public notice (to be no less frequent than once per year), under specific circumstances defined in the States's primacy program; and

(vii) *40 CFR 141.203(c)* and 141.204(c)—To require a different form and manner of delivery for Tier 2 and 3 public notices.

(3) At its option, a State may, by rule, and after notice and comment, establish alternative public notification requirements with respect to the form and content of the public notice required under subpart Q of part 141 of this chapter. The alternative requirements must provide the same type and amount of information required under subpart Q and must be designed to achieve an equivalent level of public notice of violations as would be achieved under subpart Q of part 141 of this chapter.

* * * * *

PART 143—[AMENDED]

1. The authority citation for part 143 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

§ 143.5 [Amended]

2. Part 143 is amended by removing § 143.5.

[FR Doc. 99-11162 Filed 5-6-99; 9:42 am]

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Thursday
May 13, 1999

Part III

Environmental Protection Agency

40 CFR Parts 80, 85 and 86
Air Pollution; Tier 2 Motor Vehicle
Emission Standards and Gasoline
Sulphur Control Requirements; Diesel
Fuel Quality Controls; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85 and 86

[AMS-FRL-6337-3]

RIN 2060-AI23

Control of Air Pollution From New Motor Vehicles: Proposed Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's document proposes a major program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, minivans, and sport-utility vehicles. These reductions would provide for cleaner air and greater public health protection, by reducing ozone and PM pollution. The proposed program is a comprehensive regulatory initiative that treats vehicles and fuels as a system, combining requirements for much cleaner vehicles with requirements for much lower levels of sulfur in gasoline. A list of major highlights of the proposed program appears at the beginning of **SUPPLEMENTARY INFORMATION**.

For the first time, through a phase-in, we propose to apply a single average exhaust emission standard that would cover both passenger cars and all light trucks operated on any fuel. The proposed emission levels ("Tier 2 standards") are feasible for both types of vehicles and are appropriate since the miles traveled in light trucks are increasing and the emissions from these vehicles are thus an increasing problem. This approach will build on the recent technology improvements resulting from the successful National Low-Emission Vehicles (NLEV) program and improve the performance of these vehicles through lower sulfur gasoline.

To enable the vehicle technology and generate emission reductions from current vehicles we propose to significantly reduce average gasoline sulfur levels nationwide. Refiners would generally install refining equipment to remove sulfur in their refining processes, while importers would be required to market only gasoline meeting the proposed sulfur standards. The proposal outlines an averaging, banking, and trading program to provide flexibility for refiners and ease implementation.

This program focuses on reducing the passenger car and light truck emissions most responsible for causing ozone and

particulate matter problems. Without today's action, we project that emissions from these vehicles will represent 30-40 percent of nitrogen oxides and volatile organic compound emissions in some cities, and almost 20 percent nationwide, by the year 2020.

Our proposal would bring about major reductions in annual emissions of these pollutants and also reduce the emissions of sulfur compounds coming from the sulfur in gasoline. For example, we project a reduction in oxides of nitrogen emissions of nearly 800,000 tons per year by 2007 and 1,200,000 by 2010, the time frame when many states will have to demonstrate compliance with air quality standards. Emission reductions would continue increasing for many years, reaching almost 2,200,000 tons per year in 2020. In addition, the proposed program would reduce the contribution of vehicles to other serious public health and environmental problems, including regional visibility problems, toxic air pollutants, acid rain, and nitrogen loading of estuaries.

Furthermore, we project that these reductions, and their resulting environmental benefits, would come at an average cost increase of less than \$100 per passenger car, less than \$200 per light truck, and an increase of less than 2 cents per gallon of gasoline (or about \$100 over the life of an average vehicle).

DATES: *Comments:* We must receive your comments by August 2, 1999.

Hearings: We will hold four public hearings, on June 9-10, June 11, June 15, and June 17, 1999. EPA requests that parties who want to testify notify the contact person listed in the **ADDRESSES** section of this document two weeks before the date of the hearing.

ADDRESSES: *Comments:* You may send written comments in paper form or by E-mail. We must receive them by the date indicated under "DATES" above (August 2, 1999). Send paper copies of written comments (in duplicate if possible) to Public Docket No. A-97-10 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M-1500, 401 M Street, SW, Washington, DC 20460. If possible, we also encourage you to send an electronic copy of your comments (in ASCII format) to the docket by e-mail to A-and-R-Docket@epa.gov or on a 3.5 inch diskette accompanying your paper copy. If you wish, you may send your comments by E-mail to the docket at the address listed above without the submission of a paper copy, but a paper

copy will ensure the clarity of your comments.

Please also send a separate paper copy to the contact person listed below. If you send comments by E-mail alone, we ask that you send a copy of the E-mail message that contains the comments to the contact person listed below.

EPA's Air Docket makes materials related to this rulemaking available for review at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260-7548 and by facsimile at (202) 260-4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Hearings: We will hold four public hearings at the following locations:

June 9-10, 1999, Top of the Tower, 1717 Arch Street, 51st Floor, Philadelphia, PA 19103, telephone: 215-567-8787, fax: 215-557-5171

June 11, 1999, Renaissance Atlanta Hotel, 590 West Peachtree Street, Atlanta, GA, 30308, telephone: 404-881-6000, fax: 404-815-5010

June 15, 1999, Doubletree Hotel, 3203 Quebec Street, Denver, CO, 80207, telephone: 303-321-3333, fax: 303-329-5233

June 17, 1999, Holiday Inn Lakeside City Center, 1111 Lakeside Avenue, Cleveland, OH 44144, telephone: 216-241-5100, fax: 216-241-7437

Additional information on the comment procedure and public hearings can be found in **SUPPLEMENTARY INFORMATION** under Section VII, "Public Participation."

FOR FURTHER INFORMATION CONTACT: Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor MI 48105; Telephone (734) 214-4349, FAX (734) 214-4816, E-mail connell.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

Highlights of the Tier 2/ Gasoline Sulfur Proposal

For cars and light trucks, the proposed program would:

- Through a phase-in, apply for the first time a single average exhaust emission standard that would cover both passenger cars and all light trucks. The proposed emission levels ("Tier 2 standards") are feasible for both types of vehicles and are appropriate since the miles traveled in light trucks is increasing and the emissions from these vehicles are thus an increasing problem.
- During the phase-in, apply interim standards that match or are more

stringent than current federal and California "LEV I" (Low-Emission Vehicle, Phase I) standards.

- Apply the same standards to vehicles operated on any fuel.
- Allow auto manufacturers to comply with the very stringent proposed new standards in a flexible way while ensuring that the expected environmental benefits occur.
- Build on the recent technology improvements resulting from the successful National Low-Emission Vehicles (NLEV) program and improve the performance of these vehicles through lower sulfur gasoline.
- Set more stringent particulate matter standards, primarily affecting diesel powered vehicles.
- Set more stringent evaporative emission standards.

For commercial gasoline, the proposed program would:

- Significantly reduce average gasoline sulfur levels nationwide. Refiners would generally install refining equipment to remove sulfur in their refining processes. Importers of gasoline would be required to import and market only gasoline meeting the proposed sulfur limits.
- Provide for flexible implementation by refiners through an averaging, banking, and trading program.
- Apply temporary, less stringent gasoline sulfur standards to certain small refiners.
- Enable the new Tier 2 vehicles to meet the proposed emission standards, since sulfur in gasoline degrades a vehicle's emission control performance. Lower sulfur gasoline is also important in order to enable the introduction of advanced technologies that promise higher fuel economy but are very susceptible to sulfur poisoning (for

example, gasoline direct injection engines).

- Reduce emissions from NLEV vehicles and other vehicles already on the road.

Regulated Entities

This proposed action would affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It would also affect you if you produce, distribute, or sell gasoline motor fuel.

The table below gives some examples of entities that may have to follow the proposed regulations. But because these are only examples, you should carefully examine the proposed and existing regulations in 40 CFR parts 80, 85 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS Codes ^a	SIC Codes ^b	Examples of potentially regulated entities
Industry	336111	3711	Motor Vehicle Manufacturers.
	336112	.....
	336120	.....
Industry	336311	3592	Alternative fuel vehicle converters.
	336312	3714	
	422720	5172	
	454312	5984	
	811198	7549	
	541514	8742	
	541690	8931	
Industry	811112	7533	Commercial Importers of Vehicles and Vehicle Components.
	811198	7549	
	541514	8742	
Industry	324110	2911	Petroleum Refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	
Industry	484220	4212	Gasoline Carriers.
	484230	4213	

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's document is available electronically on the day of publication from the Environmental Protection Agency Internet Web site listed below. Electronic copies of the preamble, regulatory language, Draft Regulatory Impact Analysis, and other documents associated with today's proposal are available from the EPA Office of Mobile Sources Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

Environmental Protection Agency Web Site:

<http://www.epa.gov/docs/fedrgstr/epa-air/>

(Either select a desired date or use the Search feature.)

Office of Mobile Sources (OMS) Web Site:

<http://www.epa.gov/omswwww/>

(Look in "What's New" or under the "Automobiles" topic.)

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I. Introduction

Since the passage of the 1990 Clean Air Act Amendments significant progress has been made in reducing emissions from passenger cars and light trucks. The National Low-Emission Vehicle (NLEV) and Reformulated Gasoline (RFG) programs are important examples of control programs that will continue to help reduce car and truck emissions into the near future.

Nonetheless, due to increasing vehicle population and vehicle miles traveled, passenger cars and light trucks will be significant contributors to air pollution inventories into the indefinite future. In fact, the emission contribution of light trucks and sport utility vehicles will likely surpass that of passenger cars within the next year. (This is occurring because of the combination of growth in miles traveled by light trucks and their less stringent emission standards compared to passenger cars). The program we describe below builds on the NLEV and RFG Phase II programs to develop a strong national program to protect public health and the environment well into the next century. The program while reducing VOC emissions focuses especially on NO_x

because that is where the largest air quality gains can be achieved.

We have followed several overarching principles in developing this proposal:

- Design a strong national program to assist states in every region of the country in meeting their air quality objectives.
- View vehicles and fuels as an integrated system. Define a program that continues to ensure that car and truck emission reductions are part of the solution to our nation's air quality problems.
- Establish a single set of emission standards that apply regardless of the fuel used and regardless of whether the vehicle is a car or a light truck.
- Provide compliance flexibilities that allow vehicle manufacturers and oil refiners to adjust to future market trends and honor consumer preferences.
- Encourage the development of advanced low emission, fuel efficient technologies such as lean-burn engines.
- Ensure sufficient leadtime for phase-in of the Tier 2 and gasoline sulfur program.

With these principles as background, we turn now to an overview of the vehicle and fuel aspects of the proposal. Sections I and II of this preamble will give you a brief overview of our proposal and the basics of our rationale for proposing it. Subsequent sections will expand on the air quality need, the economic impacts, and provide a more detailed description of the specifics of the proposal. The final sections deal with several subjects, including opportunities for public participation that you may wish to take advantage of. You may also want to review our Draft Regulatory Impact Analysis (RIA), found in the docket and on the Internet, where we present more detailed analyses and discussions of many topics raised in this preamble.

A. What Are the Basic Components of Today's Proposal?

The nation's air quality, while certainly better than in the past, will continue to expose tens of millions of Americans to unhealthy levels of air pollution well into the future in the absence of significant new controls on emissions from motor vehicles. EPA is therefore proposing a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and reduce sulfur in gasoline. Under the proposed program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would

provide that cleaner gasoline nationwide. In this preamble, we refer to the proposed comprehensive program as the "Tier 2/Gasoline Sulfur Control Program" or simply as the "Tier 2 Program."

1. Vehicle Emission Standards

Today's action proposes new federal emission standards ("Tier 2 standards") for passenger cars and light trucks. The program is designed to focus on reducing the emissions most responsible for the ozone and particulate matter (PM) impact from these vehicles—nitrogen oxides (NO_x) and non-methane organic gases (NMOG), consisting primarily of hydrocarbons (HC) and contributing to ambient volatile organic compounds (VOC). The program would also, for the first time, apply the same federal standards to passenger cars and all light trucks ("light light-duty trucks" (or LLDTs), rated at less than 6000 pounds gross vehicle weight and "heavy light-duty trucks" (HLDTs), rated at more than 6000 pounds gross vehicle weight).

The proposed Tier 2 standards would reduce new vehicle NO_x levels to an average of 0.07 grams per mile (g/mi). For new passenger cars and light LDTs, these standards would phase in beginning in 2004, with the standards to be fully phased in by 2007.¹ For heavy LDTs, the proposed Tier 2 standards would be phased in beginning in 2008, with full compliance in 2009. During the phase-in period from 2004–2007, all passenger cars and light LDTs not certified to Tier 2 standards would have to meet an interim average standard of 0.30 g/mi NO_x, equivalent to the current NLEV standards for LDVs.² During the period 2004–2008, heavy LDTs not certified to Tier 2 standards would phase in an average standard of 0.20 g/mi NO_x. Those not covered by the phase-in would be required to meet a traditional (non-averaging) standard of 0.60 g/mi NO_x.

Manufacturers would be allowed to comply with the very stringent proposed new standards in a flexible way, assuring that the average emissions of a company's production met the

target emission levels while allowing the manufacturer to choose from several more- and less-stringent emission categories for certification. The proposed requirements also include more stringent PM standards, which primarily affect diesel vehicles, and more stringent hydrocarbon controls (exhaust NMOG and evaporative emissions standards).

We are also proposing stringent particulate matter standards that would be especially important if there were substantial future growth in diesel sales. Even under an assumed scenario where diesel sales grew to represent 50 percent of all light-duty trucks by 2010, the PM standards being proposed today would result in a steady decrease in total direct PM_{2.5} from cars and light trucks. For this scenario of a 50 percent share for diesel light trucks, direct PM emissions in 2020 with today's proposal would be less than they are at present. Therefore, we believe that today's proposal accommodates environmental concerns about such vehicles in a way that insures positive environmental results.

2. Gasoline Sulfur Standards

The other major part of today's proposal would significantly reduce average gasoline sulfur levels nationwide. These reductions could begin to phase in as early as 2000, with full compliance by 2006. Refiners would generally install advanced refining equipment to remove sulfur during the production of gasoline. Importers of gasoline would be required to import and market only gasoline meeting the proposed sulfur limits. Temporary, less stringent standards would apply to a few small refiners.

EPA is proposing that gasoline produced by refiners and sold by gasoline importers generally meet an average sulfur standard of 30 ppm and a cap of 80 ppm in 2004. The proposed program builds upon the existing regulations covering gasoline content as it relates to emissions performance. It includes provisions for trading of sulfur credits, increasing the flexibility available to refiners for complying with the new requirements. We intend the proposed credit program to ease compliance uncertainties by providing refiners the flexibility to phase in early controls in 2000–2003 and use credits gained in these years to delay some control to as late as 2006. As proposed, the program would achieve expected environmental benefits while providing substantial flexibility to refiners. The effect of the credit program is that those refiners that participate would have the opportunity for more overall leadtime to reach the final sulfur levels.

B. What Is EPA's Statutory Authority for Proposing Today's Action?

1. Light-Duty Vehicles and Trucks

We are proposing the motor vehicle emission standards under the authority of section 202 of the Clean Air Act. Sections 202(a) and (b) of the Act provide EPA with general authority to prescribe vehicle standards, subject to any specific limitations otherwise included in the Act. Sections 202(g) and (h) specify the current standards for LDVs and LDTs, which became effective beginning in model year 1994 ("Tier 1 standards").

Section 202(i) of the Act provides specific procedures that EPA must follow to determine whether standards more stringent than Tier 1 standards for LDVs and certain LDTs³ are appropriate beginning in the 2004 model year.⁴ Specifically, we are required to first issue a study regarding "whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required * * *" (the "Tier 2 study"). This study "shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards." It is also to consider (1) the availability of technology to meet more stringent standards, taking cost, lead time, safety, and energy impacts into consideration, and, (2) the need for, and cost effectiveness of, such standards, including consideration of alternative methods of attaining or maintaining the national ambient air quality standards. A certain set of "default" emission standards for these vehicle classes is among those options for new standards that EPA is to consider.

After the study is completed and the results are reported to Congress, EPA is required to determine by rulemaking whether (1) there is a need for further emission reductions; (2) the technology for more stringent emission standards from the affected classes is available; and (3) such standards are needed and cost-effective, taking into account alternatives. If EPA answers "yes" to these questions, then the Agency is to promulgate new, more stringent motor vehicle standards ("Tier 2 standards").

EPA submitted its report to Congress on July 31, 1998. Today's proposal considers and proposes affirmative responses to the three questions above (see section II below) and sets forth new proposed standards that are more

¹ By comparison, the NO_x standards for the National Low Emission Vehicle (NLEV) program, which will be in place nationally in 2001, range from 0.30 g/mi for passenger cars to 0.50 g/mi for medium-sized light trucks. For further comparison, the standards met by today's Tier 1 vehicles range from 0.60 g/mi to 1.53 g/mi.

² There are also NMOG standards associated with both the interim and Tier 2 standards. The NMOG standards vary depending on which of various individual sets of emission standards manufacturers choose to use in complying with the average NO_x standard. This "bin" approach is described more fully in section IV.B.

³ LDTs with a loaded vehicle weight less than or equal to 3750 pounds.

⁴ Section 202(b)(1)(C) forbids EPA from promulgating mandatory standards more stringent than Tier 1 standards until the 2004 model year.

stringent than the default standards in the Act.

EPA is also proposing standards for larger light-duty trucks under the general authority of section 202(a)(1) and under section 202(a)(3) of the Act, which requires that standards applicable to emissions of hydrocarbons, NO_x, CO and PM from heavy-duty vehicles⁵ reflect the greatest degree of emission reduction available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety.

2. Gasoline Sulfur Controls

We are proposing gasoline sulfur controls pursuant to our authority under section 211(c)(1) of the Clean Air Act.⁶ Under section 211(c)(1), EPA may adopt a fuel control if at least one of the following two criteria is met: (1) the emission products of the fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or (2) the emission products of the fuel will significantly impair emissions control systems in general use or which would be in general use were the fuel control to be adopted.

We are proposing to control sulfur levels in gasoline based on both of these criteria. Under the first criterion, we believe that emissions products of sulfur in gasoline used in Tier 1 and LEV technology vehicles contribute to ozone pollution, air toxics, and PM. Under the second criterion, we believe that gasoline sulfur in fuel that will be used in Tier 2 technology vehicles will significantly impair the emissions control systems expected to be used in such vehicles. Please refer to section IV.C. below and to the Draft Regulatory Impact Analysis (RIA) for more details of our analysis and findings. The Draft RIA includes a more detailed discussion of EPA's authority to set gasoline sulfur standards, including a discussion of our proposed conclusions relating to the factors required to be considered under section 211(c).

⁵ LDTs that have gross vehicle weight ratings above 6000 pounds are considered heavy-duty vehicles under the Act. See section 202(b)(3). For regulatory purposes, we refer to these LDTs as "heavy light-duty trucks" made up of LDT3s and LDT4s.

⁶ We currently have regulatory requirements for conventional and reformulated gasoline adopted under sections 211(c) and 211(k) of the Act, in addition to the "substantially similar" requirements for fuel additives of section 211(f). These requirements directly or indirectly control sulfur levels in gasoline. See the Draft RIA for more details.

C. The Tier 2 Study and the Sulfur Staff Paper

On July 31, 1998, EPA submitted its report to Congress containing the results of the Tier 2 study.⁷ The study indicated that in the 2004 and later time frame, there will be a need for emission reductions to aid in meeting and maintaining the National Ambient Air Quality Standards (NAAQS) for both ozone and PM. Air quality modeling showed that in the 2007–2010 time frame, when Tier 2 standards would become fully effective, a number of areas would still be in nonattainment for ozone and PM even after the implementation of existing emission controls. EPA also found ample evidence that technologies would be available to meet more stringent Tier 2 standards. In addition, the study provided evidence that such standards could be implemented at a similar cost per ton of reduced pollutants as other programs aimed at similar air quality problems. Finally, the study identified several additional issues in need of further examination, including the relative stringency of car and light truck emission standards, the appropriateness of identical versus separate standards for gasoline and diesel vehicles, and the effects of sulfur in gasoline on catalyst efficiency.

In addition, on May 1, 1998, EPA released a staff paper presenting EPA's understanding of the impact of gasoline sulfur on emissions from motor vehicles and exploring what gasoline producers and automobile manufacturers could do to reduce sulfur's impact on emissions. The staff paper noted that gasoline sulfur is a catalyst poison and that high sulfur levels in commercial gasoline could affect the ability of future automobiles to meet more stringent standards in use. It also pointed out that sulfur control would provide additional benefits by lowering emissions from the current fleet of vehicles.

II. Proposed Tier 2 Determination

Based on the statutory requirements described above and the evidence provided in the Tier 2 Study, as updated in this document, EPA proposes its determination that new, more stringent emission standards are indeed needed, technologically feasible, and cost effective.

⁷ On April 28, 1998, EPA published a notice of availability announcing the release of a draft of the Tier 2 study and requesting comments on the draft. The final report to Congress included a summary and analysis of the comments EPA received.

A. There Is a Substantial Need for Further Emission Reductions in Order To Attain and Maintain National Ambient Air Quality Standards

We believe that there is a clear air quality need for new emission standards, based on the continuing air quality problems predicted to exist in future years. As the discussion in section III.B. illustrates, our modeling shows that in 2007 approximately 80 million Americans will be living in areas that are in nonattainment for the 8-hour ozone NAAQS, even with all other expected controls in place. Another 49 million people will live in attainment areas that are within 15% of being reclassified as nonattainment areas. This is a total of nearly 130 million people, which represents about 48 percent of the population of the United States.

In addition to these ozone concerns, our models indicate that by 2010, 45 areas, with 18 million people, will be in nonattainment for the original PM₁₀ NAAQS and 11 areas with 10 million people will be in nonattainment for the revised PM₁₀ NAAQS. While not a specific driving factor in today's findings, our models also project that 102 areas with about 55 million people will be in nonattainment with the new PM_{2.5} NAAQS by 2010. We also must recognize that nonattainment areas remain for other criteria pollutants (e.g., CO) and that non-criteria pollution (e.g., air toxics and regional haze) also contributes to environmental and health concerns.

Clearly there is a critical need for reductions in the emissions being projected for future years. Furthermore, mobile sources are important contributors to the emission problem. As we will explain more fully later in this preamble, in the year 2007, the cars and light trucks that are the subject of today's proposal are projected to contribute nearly 40 percent of the total NO_x and VOC inventory in some cities, and 20 percent of nationwide NO_x and VOC emissions. This situation would have been considerably worse without the NLEV program created by vehicle manufacturers, EPA, the Northeastern states, and others. We therefore believe that reductions in these source categories are an essential part of the reductions needed to attain and maintain the NAAQS. As we explain below, we propose to find that major reductions in future emissions from light-duty vehicles and trucks are both feasible and cost effective compared to available alternatives.

B. More Stringent Standards for Light-Duty Vehicles and Trucks Are Technologically Feasible

We believe that emission standards more stringent than current Tier 1 and National Low Emission Vehicle (NLEV) levels are technologically feasible. We believe this to be true both for the LDVs and LDTs specifically covered in section 202(i) and for the heavier LDTs also included in today's proposal.

Manufacturers are currently producing NLEV vehicles that meet more stringent standards than similar Tier 1 models. Our analysis shows that mainly through improvements in engine control software and catalytic converter technology, manufacturers can and are building durable vehicles and trucks, including heavy light-duty trucks, which have very low emission levels.⁸

For light duty vehicles, certified NO_x levels for 1999 reveal that NO_x levels representing full-life, deteriorated emissions in the 0.01 to 0.10 g/mi range are already being seen on some production vehicles. Similarly, light-duty trucks up to 8500 lbs. GVWR, also included in today's proposal, have some very low 1999 certification levels for NO_x, with NO_x levels of as low as 0.04 g/mi for some of the largest LDTs. These levels are well below Tier 1 and NLEV standards. Manufacturers have also certified LDVs and LDTs to NMOG and CO levels as much as 80 percent below Tier 1 standards.

As discussed in more detail below and in the Draft RIA, we believe that, by the 2004–2009 time frame proposed for the Tier 2 standards, manufacturers would be fully able to comply with the proposed new standard levels. In addition, to facilitate manufacturers' efforts to meet these new standards, the Tier 2 regulations would include a corporate fleet average, which would allow manufacturers to optimize the deployment of technology across their product lines. Our analysis of the available technology improvements and the very low emission levels already being realized on these vehicles leads us to propose a finding that today's proposed standards are fully feasible for LDVs and LDTs.

C. More Stringent Standards for Light-Duty Vehicles and Trucks Are Needed and Cost Effective Compared to Available Alternatives

In this document, we propose that Tier 2 motor vehicle standards are both

necessary and cost effective. We have already described our belief that substantial further reductions in emissions are needed to help reduce the levels of unhealthy air pollution that millions of people are being exposed to. (We describe this further below and in the Draft RIA.) In its analyses supporting the new ozone and PM NAAQS, the Agency identified those methods that were reasonably cost effective, and showed that substantial progress toward attainment could be made. However, we also concluded that methods beyond those that could be identified as cost effective at the time were needed and we assumed they would be identified in the future.

We believe that the Tier 2/gasoline sulfur proposal is one of those methods. This proposal would reduce annual NO_x emissions by about 2.2 million tons per year in 2020 and 2.8 million tons per year in 2030 after the program is fully implemented. By way of comparison, if all of the controls identified for the NAAQS analysis costing less than \$10,000/ton (the limit on cost effectiveness used in that analysis) were implemented nationwide, they would produce NO_x emission reductions of about 2.9 million tons per year. That is, to achieve significant further reductions using control approaches other than the proposed Tier 2/Gasoline Sulfur program could mean adopting measures costing well beyond \$10,000 per ton.

Further emission reductions are needed. Without Tier 2 and gasoline sulfur controls, we project that in 2007 at least 8 metropolitan areas and 2 rural counties with a combined population of 39 million will exceed the 1-hour ozone NAAQS and 28 metropolitan areas and 4 rural counties with a combined population of 80 million will exceed the 8-hour ozone NAAQS. We project that cars and light trucks will contribute 17 percent of the nationwide NO_x inventory by 2007 and 20 to 40 percent in some cities with air quality problems. The NO_x reductions from today's proposal range from 19 to 48 percent of the reductions we estimate are needed for areas to achieve attainment. We believe that the proposed program, as well as the technologies assumed for the NAAQS analysis mentioned above, are clearly cost effective approaches for attaining and maintaining the NAAQS.

The magnitude of emission reductions that can be achieved by a comprehensive national Tier 2/gasoline sulfur program would be difficult to achieve from any other source category. Given the contribution that light-duty mobile source emissions make to the national emissions inventory and the

range of control programs ozone-affected areas already have in place or would be expected to implement, we believe it will be very difficult, if not impossible, to attain and maintain the ozone NAAQS in a cost-effective manner without reducing emissions from LDVs and LDTs. In addition, we project that the Tier 2/gasoline sulfur program would reduce direct and secondary particulate matter coming from LDVs and LDTs by over 70 percent, providing reductions of almost 240,000 tons annually by 2010.

We believe, then, that today's proposal is a major and attractive source of ozone and PM precursor emission reductions when compared to other available options. It would represent a degree of emission reduction beyond those programs identified in the NAAQS analysis that we believe is currently unavailable from any other reasonable program. We also believe that it would be a cost effective program, costing approximately \$2,000 per ton of NO_x plus hydrocarbon reduced according to our estimates, which is quite attractive compared to other alternatives. The discussion of cost and cost effectiveness later in this preamble explains the derivation of these numbers and compares them to other alternatives. That discussion indicates that today's proposal would be as cost effective as both the Tier 1 and NLEV standards and cost effective when compared to non-mobile source programs as well.

III. Air Quality Need for and Impact of Today's Proposal

In the absence of significant new controls on emissions, tens of millions of Americans would continue to be exposed to unhealthy levels of air pollution. Emissions from passenger cars and light trucks are a significant contributor to a number of air pollution problems. Today's proposal would significantly reduce emissions from cars and light trucks and hence would significantly reduce the health risks posed by air pollution. This section summarizes the results of the analyses we performed to arrive at our proposed determination that continuing air quality problems are likely to exist, that these air quality problems would be in part due to emissions from cars and light trucks, and that the new standards being proposed today would improve air quality and mitigate other environmental problems.

⁸The Draft RIA contains an extended analysis, Section IV.A. below has more discussion of the technological feasibility of our proposed standards including detailed discussions of the various technology options that we believe manufacturers may use to meet these standards.

A. Americans Face Serious Air Quality Problems That Require Further Emission Reductions

Air quality in the United States continues to improve. Nationally, the 1997 air quality levels were the best on record for all six criteria pollutants.⁹ In fact, the 1990s have shown a steady trend of improvement, due to reductions in emissions from most sources of air pollution, from factories to motor vehicles. Despite these continued improvements in air quality, however, tens of millions of Americans are still exposed to unhealthy levels of ozone and PM. Moreover, unless there are reductions in overall emissions beyond those that are scheduled to be achieved by already committed controls, many of these Americans will continue to be so exposed.

Ambient ozone is formed in the atmosphere through a complex interaction of VOC and NO_x emissions. Cars and light trucks emit a substantial fraction of these emissions. Ambient PM is emitted directly from cars and light trucks; it also forms in the atmosphere from NO_x, sulfur oxides (SO_x) and VOC, all of which are emitted by motor vehicles. When ozone exceeds the air quality standards, otherwise healthy people often have reduced lung function and chest pain, and hospital admissions for people with respiratory ailments like asthma increase; for longer exposures, permanent lung damage can occur. Similarly, particles can penetrate deep into the lungs and are linked with premature death, increased hospital admissions, increased respiratory symptoms, and changes in lung tissue. When either ozone or PM air quality problems are present, those hardest hit tend to be children, the elderly, and people who already have health problems.

The health effects of high ozone and PM levels are not the only reason for concern about continuing air pollution. Ozone and PM also harm plants and damage materials. PM reduces visibility and contributes to significant visibility impairment in our national parks and monuments and in many urban areas. In addition, air pollution from motor vehicles contributes to cancer and other health risks, acidification of lakes and streams, eutrophication of coastal and inland waters, and elevated drinking water nitrate levels. These problems impose a substantial burden on public

health, our economy, and our ecosystems.

In recognition of this burden, Congress has passed and subsequently amended the Clean Air Act. The Clean Air Act requires each state to have an approved State Implementation Plan (SIP) that shows how an area plans to meet its air quality obligations, including achieving and then maintaining attainment of all of the National Ambient Air Quality Standards (NAAQS), such as those for ozone and PM.

Under EPA's proposed policy for implementing the new 8-hour ozone, revised PM₁₀, and new PM_{2.5} ambient standards (63 FR 65593, November 27, 1998), states must prepare and submit SIP revisions to demonstrate attainment of the 8-hour ozone standard between 2000 and 2003, depending on ozone classification under the 8-hour standard. The earlier submittal date applies to "transitional" areas, which are areas that are in attainment with the 1-hour standard and can attain the 8-hour standard through local measures adopted prior to classification (under the 8-hour standard) and the regional emission reductions to be achieved under the Regional Ozone Transport Rule (63 FR 57356, October 27, 1998). In general, EPA expects these areas to demonstrate attainment by 2007. Other 8-hour nonattainment areas will be classified as "traditional" under the 8-hour standard, and we believe that these areas will have attainment dates of 2007, 2009, or 2010 depending on their 1-hour classification status and 1-hour attainment date.

Because it takes three "clean" years to qualify an area to be redesignated as attainment for the ozone standard, the deadline for each area to achieve the VOC and NO_x emission reductions needed to meet the ozone standard generally should be two years earlier than its attainment date. For example, 8-hour ozone nonattainment areas for which we would establish an attainment date of 2009 would need to implement emission reductions by the start of the 2007 ozone season in order to have three "clean" years by their 8-hour attainment deadline of 2009.

The SIP revisions to demonstrate attainment with the revised PM₁₀ standard must be prepared by 2002, with attainment by 2006, unless this date is not practicable. As discussed below, EPA has also finalized regulations that regions and states implement plans for protecting and improving visibility in the 156 mandatory Federal Class I areas as defined in section 162(a) of the Clean

Air Act. These areas are primarily national parks and wilderness areas.

To accomplish the goal of full attainment in all areas according to the schedules for the various NAAQS and the visibility program, the federal government must assist the states by reducing emissions from sources that are not as practical to control at the state level as at the federal level. Vehicles and fuels move freely among the states, and they are produced by national or global scale industries. Most individual states are not in a position to regulate these industries effectively and efficiently. The Clean Air Act therefore gives EPA primary authority to regulate emissions from the various types of highway vehicles and their fuels. Our actions to reduce emissions from these and other national sources are a crucial and essential complement to actions by states to reduce emissions from more localized sources.

If we do not adopt new standards to reduce emissions from cars and light trucks, emissions from these vehicles would remain a large portion of the emissions burden that causes elevated ozone and continued nonattainment with the ozone NAAQS, which in turn affects tens of millions of Americans. Without new standards, steady annual increases in fleet size and miles of travel will outstrip the benefits of current emission controls, and will cause ozone-forming emissions from cars and trucks to grow each year starting about 2014. The contribution of these vehicles to PM exposure and PM nonattainment would also remain significant, and could increase considerably if diesel engines are used in more cars or light trucks. For ozone in particular, the contribution of cars and light trucks—in terms of both local emissions and transported pollution—will be so significant to those areas expected to be in nonattainment in the 2007 to 2010 time frame, and the expected emission reduction shortfall in these areas will be so large, that further reductions from cars and light trucks are an inescapable element of any attainment strategy.

The standards we are proposing would cut the contribution of ozone and PM precursors from cars and light trucks greatly. Even with this cut, many areas will likely still find it necessary to obtain additional reductions from other sources in order to fully attain the ozone and PM NAAQS. However, their task would be easier and the economic impact on their industries and citizens would be lighter as a result of the actions proposed today. This would be a critical benefit of today's proposal. Following implementation of the Regional Ozone Transport Rule, states

⁹ National Air Quality and Emissions Trend Report, 1997, Air Quality Trends Analysis Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C., December 1998 (available on the World Wide Web at <http://www.epa.gov/oar/aqtrnd97/>).

will have already adopted emission reduction requirements for nearly all large sources of VOC and NO_x for which cost-effective control technologies are known. Those that remain in nonattainment will therefore have to consider their other alternatives. In fact, however, many of the alternatives states will have to consider are very costly, with a small impact from each additional category subjected to new emission controls. The emission reductions from today's proposed standards for gasoline, cars, and light trucks would ease the need for states to find first-time reductions from the mostly smaller sources that have not yet been controlled, including area sources that are closely connected with individual and small business activities. They would also reduce the need for states to seek even deeper reductions from large and small sources already subject to emission controls.

In our meetings and correspondence with state and local officials, they asked us to reduce the emissions from cars and trucks, so that their charge of protecting the public against air pollution is one they can accomplish on schedule and without adverse economic impacts. We heard from the Northeast States for Coordinated Air Use Management, the Ozone Transport Commission, the State and Territorial Air Program Administrators, and the Association of Local Air Pollution Control Officers. They consistently told us that it would be very difficult and costly for the states to obtain comparable reductions from other sources as substitutes for reductions from cars and light trucks, especially on top of the additional reductions needed to reach ozone attainment even with the reductions from today's proposal.

We project that today's proposal would also have important benefits for regional visibility, acid rain, and coastal water quality.

For these and other reasons discussed in this document, we are proposing to determine that significant emission reductions will still be needed by the middle of the next decade and beyond to achieve and maintain further improvements in air quality in many, geographically dispersed areas. We also believe that a significant portion of these emission reductions can be obtained by reducing emissions from cars and light trucks. We believe that such reductions are in fact necessary (since cars and light trucks are such large contributors to current and projected ozone problems) and reasonable (since these reductions could be achieved at a reasonable cost

compared to other alternative reductions).

The remainder of this section describes the health and environmental problems that today's proposal would help mitigate and the expected health and environmental benefits of this proposal. Ozone is discussed first, followed by PM, other criteria pollutants, visibility, air toxics, and other environmental impacts. The emission inventories and air quality analyses are explained more fully in the Draft Regulatory Impact Analysis for today's proposal.

B. Ozone

1. Ozone Levels Have Declined, but Unhealthy Levels of Ozone Persist

Ground-level ozone is the main harmful ingredient in smog.¹⁰ It is produced by complex chemical reactions when its precursors, VOC and NO_x, react in the presence of sunlight. The chemical reactions that create ozone take place while the wind is carrying the pollutants, which means that ozone can be more severe many miles away from the source of ozone-forming emissions than it is at the source. The movement of ozone and its precursors is called "ozone transport" and suggests two complementary approaches to reduce ozone levels in areas affected by ozone transport:

- (1) Reduce ozone precursor emissions in the area itself.
- (2) Reduce ozone precursor emissions in upwind areas to reduce incoming ozone and ozone precursor levels.

Within a nonattainment area itself, both VOC and NO_x reductions are generally beneficial. Especially in the eastern portion of the U.S., the second approach of controlling upwind emissions can play an important part in efforts to reduce ozone levels in nonattainment areas. Because individual states cannot control upwind sources of air pollution that lie outside their borders, EPA has a special role in managing transport impacts. Vehicle and fuel standards should play a part in doing so.

Since NO_x affects downwind ozone levels in the eastern U.S. over greater distances than VOC does, reductions in upwind NO_x emissions are particularly important in reducing ozone levels downwind. Modeling conducted by the Ozone Transport Assessment Group, discussed below, indicates that VOC reductions substantially upwind from nonattainment areas have little benefit in those nonattainment areas across the

eastern region of the U.S. By contrast, VOC reductions in or near nonattainment areas do provide air quality benefits. Since cars and light trucks meeting today's proposed standards would operate everywhere, today's proposal would reduce VOC and NO_x emissions in both nonattainment areas and in upwind areas.

The new standards being proposed today would have their largest effect on NO_x emissions. Sulfur in gasoline has been found to increase NO_x emissions more than VOC emissions, and reducing sulfur would therefore yield larger NO_x reductions than VOC reductions. Similarly, the vehicle standards proposed today represent a greater reduction from current NO_x standards than is the case for VOC. We have taken this approach because air quality modeling conducted for OTAG, and subsequent modeling we have conducted, indicates that NO_x reductions would have larger ozone benefits than would VOC reductions. In addition, we believe that individual nonattainment areas have a wider range of alternative control opportunities for VOC than they have for NO_x.

Ozone levels have decreased significantly over the past 20 years as VOC and NO_x emissions have been reduced. However, ozone levels in much of the country remain a major concern. Outside of California, the 1990 census showed 72 million people living in areas that were formally designated as non-attainment for the 1-hour standard as of August 10, 1998. Measured ozone design values from 1995 to 1997 in the region analyzed by the Ozone Transport Assessment Group (OTAG)¹¹ indicate that in this region alone, 26 metropolitan areas and 8 rural counties together containing 75 million people experienced ozone levels in excess of the 1-hour ozone standard.

The 8-hour ozone standard is more stringent and protective than the 1-hour standard, and more areas have exceeded it in the recent past. In 1995 to 1997, at least one county in each of 81 metropolitan areas and an additional 30 rural counties together containing 110 million people had ozone values in excess of the 8-hour ozone standard. Additional areas in the OTAG region had ozone levels within 15 percent of the 8-hour standard and hence faced potentially significant maintenance challenges: 52 metropolitan areas and 44 rural counties together containing 26 million people.

For several reasons, we expect to see substantial additional progress in

¹⁰ Ozone also occurs naturally in the stratosphere and provides a protective layer high above the earth.

¹¹ OTAG evaluated a region that included all or part of the easternmost 37 states.

reducing ozone levels over the next ten years despite continued growth in electric power generation, industrial output, nonroad activity levels, and vehicle miles traveled. NO_x and VOC emissions from mobile sources will continue to decline as older, higher-emitting vehicles and nonroad engines are retired from service and replaced with newer vehicles and nonroad engines that must meet more stringent federal emission standards. Other federal regulations that will reduce ozone precursor emissions will take effect, such as regulations that will reduce VOC emissions from paints and other architectural coatings. Beginning in 2000, areas of the country participating in the federal reformulated gasoline program will receive lower-emitting Phase 2 reformulated gasoline. States are expected to implement additional measures to reduce NO_x and VOC emissions in 1-hour ozone nonattainment areas. In addition, the final Regional Ozone Transport Rule (ROTR) (63 FR 57356, October 27, 1998) requires the District of Columbia and 22 states in the eastern U.S. to reduce their NO_x emissions substantially by 2003 to reduce ozone levels in downwind states.

Using the most recent improvements to the OTAG emission inventories and the OTAG ozone model, we project that in the OTAG region, these combined emission reductions will bring 18 of the aforementioned 26 metropolitan areas and 6 of the 8 rural counties, with 36 million residents, into attainment with the 1-hour ozone standard by 2007. The same emission reductions are projected to bring ozone design values below the 8-hour standard in 53 out of 81 metropolitan areas and 26 out of 30 rural counties, with a combined 1990 population of 30 million people.¹²

However, we still project many areas in the OTAG region to have ozone design values in 2007 in excess of the 1-hour and 8-hour standards. Eight metropolitan areas and two counties with a combined 1990 population of 39 million are projected to experience ozone design values in excess of the 1-hour ozone standard in 2007.¹³ Twenty-eight areas and 4 rural counties, with a

combined 1990 population of 80 million, are projected to experience ozone design values at levels in excess of the 8-hour standard in 2007.

Additional areas outside the OTAG modeling region may also experience high ozone levels, even with the additional emission controls that will be implemented by 2007. The most recent assessment for these areas was made in the Regulatory Impact Analysis for the revised NAAQS (NAAQS RIA).¹⁴ That assessment predicted that many areas in California will require substantial additional reductions to attain the 1-hour and 8-hour ozone standards. Although the vehicle and fuel standards being proposed today would not apply to vehicles and fuel sold in California, we project that today's proposals would lead to emission reductions within California. According to the State of California, about 7 to 10 percent of all car and light truck travel in California takes place in vehicles originally sold outside California. These vehicles operate in California during visits and after relocation of households from other states. Today's proposal would cause those vehicles to be cleaner, assisting California's nonattainment areas to meet the ozone standards. In addition, this proposal requires that gasoline in all states (except California, which has its own low-sulfur gasoline program) have a low sulfur content, in order to maintain catalyst effectiveness. This would ensure that vehicles belonging to California residents get clean gasoline when they travel outside of California, so that they return to California with fully functioning catalysts.

Outside of California and the OTAG region, the NAAQS RIA modeling indicated that all areas would attain the 1-hour standard by 2010. One area (Phoenix, AZ) was projected not to attain the 8-hour standard. Eleven other areas were projected to have ozone levels within 15 percent of the 8-hour standard and hence face potential challenges in maintaining their attainment status.

Furthermore, even an area now in attainment or that reaches attainment by 2007 can be at risk of becoming nonattainment in the face of continued growth in its population, economy, vehicle traffic, and nonroad equipment activity levels. Also, an area that we have estimated will reach attainment in

2007 may fail to do so if growth is higher than we project, if emission controls are less effective, or if the modeling is otherwise in error. Our modeling for the OTAG region has estimated that of the 1-hour nonattainment areas projected to reach attainment by 2007 with the benefits of the Regional Ozone Transport Rule (ROTR) and other already committed measures, 17 metropolitan areas and 5 rural counties, with a combined 1990 population of 35 million people, will remain within 15 percent of the 1-hour standard. These areas would benefit from additional reductions to help ensure that they will attain.

With respect to the 8-hour standard, we estimate that 80 metropolitan areas and 39 rural counties with a 1990 population of 49 million people will have design values within 15 percent of the 8-hour standard. These areas have some risk of not actually being in attainment in 2007, and will face potentially significant challenges maintaining their attainment status in future years. Today's proposed standards would help ensure these areas do attain, and help these areas accommodate continued population and economic growth while staying in attainment with the 8-hour ozone standard by further reducing levels of ozone precursors.

EPA's best ozone projections at the current time for the OTAG region are summarized in Tables III-1 and III-2, where "ROTR" refers to the Regional Ozone Transport Rule. It should be noted that the results for the OTAG regions discussed above and summarized in the following tables apply to only a portion of the area that would benefit from today's proposal.

TABLE III-1.—EXTENT OF POTENTIAL 1-HOUR OZONE PROBLEM AREAS IN 2007 IN THE OTAG REGION.^a

	2007 projections with ROTR
Design values in excess of the 1-Hour NAAQS (≥ 125 ppb)	
Number of Metropolitan Areas	8
Number of Rural Counties	2
1990 Population of Metropolitan Areas and Rural Counties (millions)	39

^a Additional potential problem areas in California.

¹² The design value is the calculated ozone level, based on ozone measurements in the area, that is compared to the NAAQS to determine compliance with the standard.

¹³ Various states have submitted SIPs to meet a requirement that they demonstrate attainment with the 1-hour ozone standard by 2005 or 2007 (the exact date is state-specific, depending on the severity of their violation of the 1-hour standard). These plans were submitted to EPA in the first half of 1998, and we are still reviewing them for their completeness and approvability. We have not fully evaluated the impact of the measures contained in these plans on future ozone levels. As a result, they are not included in the baseline emission inventory.

¹⁴ "Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule," Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC, July 17, 1997.

TABLE III-2.—EXTENT OF POTENTIAL 8-HOUR OZONE PROBLEM AREAS IN 2007 IN THE OTAG REGION ^a

	2007 projections with ROTR
Design values in excess of the 8-Hour NAAQS (≥ 85 ppb)	
Number of Metropolitan Areas	28
Number of Rural Counties	4
1990 Population of Metropolitan Areas and Rural Counties (millions)	80
Design values within 15 percent of the 8-Hour NAAQS (72–84 ppb)	
Number of Metropolitan Areas	80
Number of Rural Counties	39
1990 Population of Metropolitan Areas and Rural Counties (millions)	49

^aPhoenix, Arizona and multiple areas in California are also potential problem areas.

It should be noted that the areas included in Table III-2 have not been designated to be in nonattainment with the 8-hour ozone NAAQS. Such designations will not be made by EPA until 2000, and these designations will be based on the data that are most recently available at that time.¹⁵ Instead, the areas included in Table III-2 have been projected to have design values that would place them in nonattainment in 2007, using an approach described in the Draft RIA.¹⁶ This approach enabled EPA to estimate the extent of the 8-hour nonattainment problem after implementing the reductions set forth in the Regional Ozone Transport Rule and the measures states have adopted or are specifically required by the Clean Air Act to adopt for their existing 1-hour

nonattainment areas. (The modeling did not consider the impact of additional measures that may appear in the SIP revisions submitted by some states in the first half of 1998.)

We believe the large reductions called for in today's action would substantially reduce ozone levels nationwide and would therefore reduce ozone levels and design values in the areas projected to otherwise exceed the 8-hour standard as well as in those areas facing potentially significant maintenance challenges.

2. Cars and Light-Duty Trucks Are a Big Part of the NO_x and VOC Inventory, and Today's Proposal Would Reduce This Contribution Substantially

Emissions of VOCs and NO_x come from a variety of sources, both natural and from human activity. Natural sources, including emissions that have been traced to vegetation, account for a substantial portion of total VOC emissions in rural areas. The remainder of this section focuses on the contribution of motor vehicles to emissions from human sources. Human-caused VOCs are released as byproducts of incomplete combustion as well as evaporation of solvents and fuels. For gasoline-fueled cars and light trucks, approximately half of the VOC emissions come from the vehicle exhaust and half come from the evaporation of gasoline from the fuel system. NO_x emissions are dominated by human sources, most notably high-temperature combustion processes such as those occurring in automobiles and power plants. Emissions from cars and light trucks are currently, and will remain, a major part of nationwide VOC and NO_x emissions. In 1996, cars and light trucks comprised 25 percent of the VOC emissions and 21 percent of the NO_x emissions from human sources in the U.S.¹⁷ The contribution in metropolitan areas was generally larger.

Motor vehicle emission controls have led to significant improvements in emission levels in the air (the "emission inventory") and will continue to do so in the near term. As a result of the introduction of cleaner reformulated gasoline in 2000, the introduction of National Low Emission Vehicles (NLEVs) and vehicles complying with the Enhanced Evaporative Test Procedure and Supplemental Federal Test Procedures, and the continuing removal of older, higher-emitting vehicles from the in-use vehicle fleet,

total emissions from the car and light truck fleet are projected to continue to decline through the next decade, reaching a low point for NO_x in 2013 (Figure III-1) and for VOC in 2015.¹⁸ On a per mile basis, average VOC and NO_x emissions from cars and light trucks combined will continue to decline well beyond 2015, reflecting the continuing effect of existing emission control programs. However, projected increases in vehicle miles traveled (VMT) will cause total emissions from these vehicles to increase. With this increase in travel and without additional controls, we project that combined NO_x and VOC emissions for cars and light trucks will increase starting in 2013 and 2015, respectively, so that by 2030 they will have returned to levels nearly the same as they will be in 2000. In cities experiencing rapid growth, such as Charlotte, North Carolina, the near-term trend toward lower emissions tends to reverse sooner.

Figure III-1 illustrates this expected trend in car and light truck NO_x emissions in the absence of today's proposed standards for vehicles and gasoline. The figure also allows the contribution of cars to be distinguished from that of light trucks. The figure clearly shows the impact of steady growth in light truck sales and travel on overall light-duty NO_x emissions; the decrease in overall light-duty emission levels is due solely to reductions in LDV emissions. In 2000, we project that trucks will produce about 50 percent of combined car and light truck NO_x emissions. We project that truck emissions will actually increase after 2000, and over the next 30 years, trucks will grow to dominate light-duty NO_x emissions. By 2007, we project trucks will make up two-thirds of light-duty NO_x emissions; by 2020, nearly three-quarters of all light-duty NO_x emissions will be produced by trucks.

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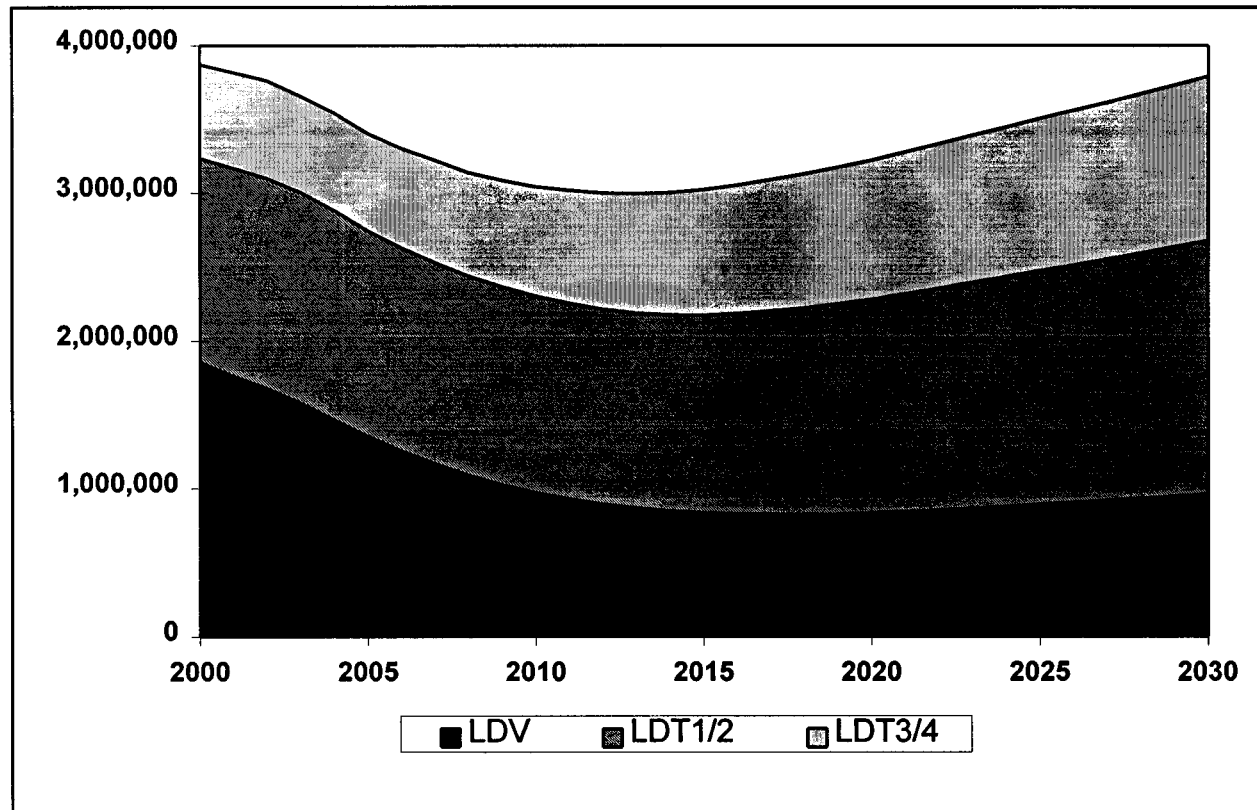
¹⁵It should also be noted that the number and 1990 population of metropolitan areas projected to be near or above the 8-hour ozone standard in Table III-2 are based on the boundaries of ozone nonattainment areas as currently defined under the 1-hour ozone standard. These boundaries will be reevaluated as 8-hour ozone nonattainment areas are designated and may change from those used above, affecting the count and population of the potential problem areas.

¹⁶The approach uses a combination of ambient monitoring data and regional ozone photochemical grid modeling for specific ozone episodes to develop statistical correlations between modeled ozone levels and projected future monitoring results. The approach does not reflect any further emission reductions that may have been included in revisions to State Implementation Plans (SIPs) for ozone that EPA received from some states in the first half of 1998. These SIP revisions are still under review by EPA for completeness and approvability.

¹⁷Emission Trend Report, 1997.

¹⁸The auto manufacturer and northeastern state commitments to the NLEV program are scheduled to end in 2004 without further EPA action on Tier 2 standards, although continued voluntary compliance by automobile manufacturers and the affected states is a possibility. Our analysis of emission trends and the emission benefits expected from today's proposal assumes for the base scenario a continuation of the NLEV program past 2004. It also includes all other control measures assumed to be implemented for the purposes of the proposed state-level NO_x budgets in the Regional Ozone Transport Rule, such as reformulated gasoline in all required and opt-in areas and enhanced I/M where required.

Figure III-1.
Light-duty NOx emissions without Tier 2 (annual tons)^a



^a Estimates exclude California, Alaska, and Hawaii, although reductions would occur in all three. For all cases, this figure reflects implementation of ROTR and other measures assumed in the ROTR. The estimates reflect continuation of NLEV beyond 2004.

Today's action would significantly decrease NO_x and VOC emissions from cars and light trucks, and would delay the date by which NO_x and VOC emissions would begin to increase due to continued VMT growth. With Tier 2/

Sulfur control, light-duty vehicle NO_x and VOC emissions are projected to continue their downward trend past 2020. Table III-3 shows the annual tons of NO_x that we project would be reduced if today's proposal were

adopted.¹⁹ These projections include the benefits of low sulfur fuel and the introduction of Tier 2 car and light truck standards.

TABLE III-3.—NO_x EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/SULFUR CONTROL ^a

Year	Light-duty tons without tier 2	Light-duty percent of total without tier 2 (percent)	Light-duty tons reduced by tier 2 ^b
2007	3,218,530	17	795,734
2010	3,041,639	17	1,182,323
2015	3,020,806	17	1,778,881
2020	3,221,151	18	2,198,113

^a Estimates exclude California, Alaska, and Hawaii, although reductions would occur in all three. For all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR. For the "Without Tier 2" case, the estimates reflect continuation of NLEV beyond 2004.

^b Does not include emission reductions from heavy-duty gasoline vehicles.

The lower sulfur levels proposed today would produce large emission reductions on pre-Tier 2 vehicles as soon as low-sulfur gasoline is introduced, in addition to enabling Tier 2 vehicles to achieve lower emission levels. Among the pre-Tier 2 vehicles, the largest per vehicle emission reductions from lower sulfur in gasoline would be achieved from vehicles that automobile manufacturers will have sold under the voluntary National Low Emission Vehicle program. These vehicles are capable of substantially lower emissions when operated on low sulfur fuel. Older technology vehicles experience a smaller but significant effect.

In 2007, when all gasoline would meet the new sulfur limit and when large numbers of 2004 and newer vehicles meeting the proposed standards would be in use, the combined NO_x emission reduction from vehicles and fuels would be nearly 800,000 tons per year. After 2007, emissions would be reduced further as the fleet turned over to Tier 2 vehicles operating on low sulfur fuel. By 2020, NO_x emissions would be reduced by two-thirds from the levels that would occur if today's proposal were not adopted. This reduction equals the NO_x emissions from over 166 million pre-Tier 2/Sulfur cars and light trucks. This reduction would represent a 12 percent NO_x reduction in emissions from all manmade sources.

VOC emissions would also be reduced by today's proposal, with reductions increasing as the fleet turns over. The

reductions as a percent of emissions from cars and light trucks would be 5 percent in 2007 and grow to 16 percent in 2020.

As discussed earlier, in California, smaller but still substantial reductions in both NO_x and VOC would be achieved because vehicles visiting and relocating to California would be designed to meet today's proposed standards. Also, vehicles from California visiting other states would not be exposed to high sulfur fuel.

These estimates of emission reductions reflect a mixture of urban, suburban, and rural areas. As we noted in the Tier 2 Study, however, cars and light trucks generally make up a larger fraction of the emission inventory for urban and suburban areas, where human population and personal vehicle travel is more concentrated than emissions from other sources such as heavy-duty highway vehicles, power plants, and industrial boilers. We have estimated emission inventories for three cities using the same methods as were used to project the nationwide inventories, and we present the results for 2007 below in Table III-4. Inventory shares in 2010 are about the same.

These results confirm that light-duty vehicles make up a greater share of the NO_x emission inventories in urban areas than they do in the nationwide inventory. While these vehicles' share of national NO_x emissions in 2007 is about 17 percent, it is estimated to be about 38 percent in the Atlanta area. There is also a range in VOC contributions, with Atlanta again being the area with the

largest car and light truck contribution at 33 percent. In metropolitan areas with high car and light truck contributions, today's proposal would represent a larger step toward attainment since it would have a larger effect on total emissions.

TABLE III-4.—PROPORTION OF THE TOTAL URBAN AREA NO_x AND VOC INVENTORY IN 2007 ATTRIBUTABLE TO LIGHT-DUTY VEHICLES ^a

Region	NO _x (percent)	VOC (percent)
Nationwide ^a	17	18
New York urban area	29	15
Atlanta urban area	38	33
Charlotte urban area	18	15

^a For all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR. The estimates reflect continuation of NLEV beyond 2004.

Another useful perspective from which to view the magnitude of the emission reductions from today's proposal is in terms of the additional emission reductions from all human sources that areas will need to attain the 8-hour ozone standard. For this analysis, we included the implementation of the Regional Ozone Transport Rule but assumed that today's proposal was not implemented. In the previously referenced NAAQS RIA we estimated additional NO_x emission reductions that, along with specific accompanying VOC reductions, would bring each residual nonattainment area into attainment with the 8-hour ozone

¹⁹ Today's proposed standards for both vehicles and fuels would apply in 49 states and the U.S. territories, excluding only California. If today's proposal is adopted, there would also be emissions

reductions in California from vehicles that relocate or visit from other states. However, much of the emissions inventory analysis for this proposal was made for a 47-state region that excludes California,

Alaska, and Hawaii, since these states were not included in the scope of ozone modeling.

standard by 2010. We have used these estimated reductions as the basis for Table III-5, which shows the NO_x reductions needed to reach attainment in 2007 for six metropolitan areas.²⁰ These are areas for which both the NAAQS RIA and the ozone modeling for this proposal forecasted continued 8-hour nonattainment in that year, even with the emission reductions from the Regional Ozone Transport Rule.

Table III-5 also shows the NO_x emission reductions in those same six areas that we project would result if

today's proposal were implemented. Although the two analyses differ in some emission modeling estimates, the comparison is valid as a general indication of the contribution today's proposal can make to attainment. Cars and light trucks contribute about 20 to 40 percent of the NO_x inventory in these six areas. The NO_x reductions estimated for today's proposal range from 19 to 50 percent of the reductions that are estimated to be needed for attainment. These figures show that today's proposal would make a very

substantial contribution to these cities' attainment programs, but that there will still be a need for additional reductions from other sources. The emission reductions from today's proposal would clearly not exceed the reductions needed from an air quality perspective for these areas; as described in the next section, we project that about 20 other areas in the eastern U.S. would also need reductions beyond those of today's proposed program to attain the NAAQS for NO_x.

TABLE III-5.—COMPARISON OF TIER 2/SULFUR NO_x REDUCTIONS TO NO_x REDUCTIONS ESTIMATED TO PRODUCE 8-HOUR OZONE ATTAINMENT IN 2007

Metro area	NO _x reductions estimated to produce attainment (tons/year)	NO _x reductions from proposed tier 2/sulfur standards (tons/year)	Tier 2/sulfur NO _x reductions as percent of reductions to produce attainment
Atlanta	69,802	17,271	25
Dallas	41,283	14,761	36
Memphis	7,343	3,683	50
NY-NJ-CT	186,880	35,906	19
Philadelphia	63,456	19,942	31
Washington, DC-Baltimore	62,519	22,673	36

3. Tier 2/Sulfur Ozone Benefits and the Post-Tier 2/Sulfur Ozone Problem

By reducing ozone precursor emissions from cars and light trucks in areas where ozone levels are near or above the ozone standard, today's proposal would reduce local ozone levels. And by reducing ozone precursor emissions in upwind areas, today's proposal would reduce ozone and ozone precursor levels in the air flowing into areas where ozone levels are high. EPA's analysis of the ozone impact of today's proposal suggests that it would yield large reductions in ozone, particularly in areas where ozone transport plays a significant role in local nonattainment problems. There are uncertainties associated with the modeling we have used to estimate these reductions, but we are certain that the emission reductions would be large.

Ozone levels in a few locations in the centers of large metropolitan areas are VOC-limited; that is, the atmospheric chemistry is such that ozone levels tend to respond to VOC reductions rather than to NO_x reductions. Some of these areas may experience essentially no change or a slight ozone increase on some days, if one considers only the isolated effect of the emission reductions due to today's proposal.

However, it has long been recognized that metropolitan areas containing such locations will need to implement additional VOC reductions from local sources to reach attainment. If these reductions and the reductions from today's proposal were combined, the net effect would be a progressive drop in ozone levels until attainment is reached.

To examine the impact of today's proposal on ozone levels, we estimated the ozone effects of the emission reductions that would occur in 2007 and 2010 for the area covered by the OTAG ozone model. The 1-hour ozone reductions in 2007 are relevant to the several 1-hour nonattainment areas required to reach attainment in that year. The 8-hour reductions in 2007 and 2010 are of great relevance to the efforts of states to achieve attainment with the 8-hour ozone standard, since for many areas these dates bracket the three "clean" years required to show attainment by their actual deadline.

The estimated emission reductions from our proposal in 2007 and 2010 would be substantial due to the effect of low sulfur fuel on the entire in-use fleet of gasoline vehicles and trucks of all sizes, especially those designed to meet NLEV standards, and due to the fact that many cleaner 2004 and newer vehicles

would be on the road. Table III-6 provides a summary of the 1-hour ozone results for the OTAG modeling area for 2007. Table III-7 provides a summary of the 2007 and 2010 results for the 8-hour standard. According to our best modeling, the reductions in 2007 would make the difference between nonattainment and attainment for four metropolitan areas with a combined 1990 population of 15 million people. In 2010, we estimate that the Tier2/Sulfur reductions would be enough by themselves to bring eight metropolitan areas with 13 million people into attainment with the 8-hour standard.

Tables III-6 and III-7 indicate that we project that some areas would not attain with only the emission reductions from the Tier 2/Sulfur proposal. However, we do project that those areas would experience reductions in ozone levels. These reductions would mean that even the areas that are not brought all the way to attainment would not need to reduce emissions from other sources as much as would be required without today's proposal, as previously explained. Of the 18 areas that we projected would not be brought to attainment with the 8-hour standard in 2010, we project that 10 areas would

²⁰ We calculated the estimated reductions needed for attainment in 2007 by adding the reductions due

to NLEV vehicles entering the fleet between 2007

and 2010 to the estimated reductions needed for attainment in 2010.

have design values within 5 percent of the standard.

Today's proposal would also benefit ozone nonattainment areas outside of the OTAG modeling region, including the one area (Phoenix, Arizona) projected to be in nonattainment for ozone in 2010 in the absence of Tier 2/

Sulfur controls. The Tier 2/Sulfur controls being proposed today would help Phoenix attain the ozone standard, particularly since cars and light trucks are a relatively large part of the Phoenix emission inventory. These controls also would help the 11 areas projected to

face potential maintenance challenges stay in attainment as their economies and populations grow. And as already mentioned, because about 7 to 10 percent of travel in California is by non-California vehicles, there would be a substantial benefit in that state also.

TABLE III-6.—PROJECTED TIER 2/SULFUR IMPACT ON POTENTIAL 1-HOUR OZONE PROBLEM AREAS IN THE OTAG REGION IN 2007 ^a

	2007 without tier 2/sulfur	2007 with tier 2/sulfur	Change due to tier 2/sulfur
Design values projected to be in excess of the 1-Hour NAAQS (≥ 125 ppb)			
Number of Metropolitan Areas	8	4	-4
Number of Rural Counties	2	2	0
1990 Population of Metropolitan Areas and Rural Counties (millions)	39	24	-15

^a For all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR. For the "Without Tier 2/Sulfur" case, the estimates reflect continuation of NLEV beyond 2004.

TABLE III-7.—PROJECTED TIER 2/SULFUR IMPACT ON POTENTIAL 8-HOUR OZONE PROBLEM AREAS IN THE OTAG REGION IN 2007 AND 2010 ^a

	Without tier 2/sulfur	With tier 2/sulfur	Change due to tier 2/sulfur
Design values projected to be in excess of the 8-Hour NAAQS (≥ 85 ppb) in 2007			
Number of Metropolitan Areas	28	25	-3
Number of Rural Counties	4	3	-1
1990 Population of Metropolitan Areas and Rural Counties (millions)	80	72	-8
Design values projected to be in excess of the 8-Hour NAAQS (≥ 85 ppb) in 2010			
Number of Metropolitan Areas	26	^b 18	-8
Number of Rural Counties	3	3	0
1990 Population of Metropolitan Areas and Rural Counties (millions)	78	65	-13

^a For all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR. For the "Without Tier 2/Sulfur" case, the estimates reflect continuation of NLEV beyond 2004.

^b Of these 18 areas predicted to remain nonattainment, 10 would be within 5 percent of the 8-hour ozone standard.

Much larger VOC and NO_x emission reductions would occur in 2020, when the vehicle fleet would be almost fully turned over to Tier 2 vehicles. The 2020 scenario is designed to help evaluate the long-term impact of today's proposal on ozone levels, when the majority of the vehicle fleet would consist of vehicles that meet the standards being proposed today.

We present three indicators of the benefits of today's proposed program in 2020. First, as shown in Table III-3, that today's proposal would reduce NO_x emissions in 2020 by over 2,000,000 tons per year, not counting reductions in California, Hawaii, and Alaska. The reduction in each nonattainment area would also be very substantial. Second, we have estimated how much design values in 2020 would change due to today's proposal. For all counties projected to need emission reductions beyond the ROTR, the average reduction in 2020 design value was 6 ppb, or almost 8 percent of the 8-hour standard

itself. The range of design value reductions was 3 to 12 ppb. These results included only the region covered by the OTAG ozone model. Third, when we analyzed the 2020 scenario to take into account the duration, severity, and geographic extent of high ozone levels, we found that projected excessive 8-hour ozone levels, defined as grid cell-days above 85 ppm ozone, were reduced by 43 percent.

The baseline scenario against which the ozone effects of today's proposed standards in 2020 were compared assumes that no emission control efforts beyond those assumed in the ROTR are implemented. We believe this approximation is reasonable because our inventory modeling shows that in 2020, total human-caused emissions in the absence of today's proposed program change very little from their 2007 levels. We subtracted the emission benefits of today's proposed program in 2020 from those baseline emissions to

approximate the emissions that would result in 2020.

We expect the requirement to achieve attainment with the 8-hour standard will cause states with residual nonattainment areas to adopt additional controls in pursuit of their attainment obligations. The increasingly large emission reductions from today's proposal that would occur over time would be of great value to those areas since these areas would not need to implement as extensive or stringent additional controls as would otherwise be the case. Furthermore, once an area reaches attainment, it must adopt a SIP revision containing a strategy to maintain the standard thereafter. The reductions from today's proposal would help such areas overcome any loss of reductions due to less-than-expected effectiveness from other controls, provide a safety margin against the chance of new ozone violations, provide room for population and economic growth to cause increases in emissions

from other sources with less need for the maintenance plan to increase the stringency of controls on those other sources, and possibly even allow selective relaxation of other control programs.

Because the ozone modeling for 2020 did not account for the additional measures that states will adopt to attain and maintain the ozone standard, an attainment vs. nonattainment distinction does not apply in 2020. Instead, the changes that today's proposal would achieve in 2020 precursor emissions and in predicted ozone concentrations are more appropriate indicators of the benefits of the Tier2/Sulfur program than would be a count of the areas that have design values move from above to below the ozone standard.

These ozone results for 2007, 2010, and 2020 represent the best modeling currently available to us, but should be considered approximate. The Regulatory Impact Analysis documents all the methods and assumptions used. The results presented are estimates of the future that only apply to the OTAG region rather than the entire area that would be subject to today's proposal. As previously mentioned, there would also be ozone benefits outside this region, particularly for nonattainment areas in California and for Phoenix, Arizona. We expect to revise our ozone effects estimates prior to the final rule to reflect further improvements in estimates of emissions from both mobile and stationary sources.

In addition to the emission-reduction and ozone-reduction benefits discussed above that we expect will result from the proposed rule, we have done a separate analysis of economic benefits (and costs) associated with the expected ozone reductions from today's proposed program (see Section IV.D.5. below and the RIA).

C. Particulate Matter

1. Particulate Matter Presents Substantial Public Health Risks

Particulate matter (PM) is produced as a direct result of human activity and natural processes, and it is also formed through chemical and physical processes in the atmosphere. Natural sources include windblown dust, salt from dried sea spray, fires, and volcanoes, as well as so-called secondary particles formed from the transformation of natural emissions of SO_x, NO_x, and VOCs. Human sources include industrial activities, agriculture, road dust, and soot, as well as secondary particles produced from gases such as SO_x, NO_x, and VOCs that are

emitted primarily from combustion processes. PM includes fine particles with a diameter smaller than 2.5 microns (also called PM_{2.5}) and coarse particles with larger diameters. Coarse particles are predominantly from non-combustion sources and are dominated by soil dust and sea salt. They remain in the atmosphere a relatively short period of time. Fine particulate includes carbon-based particles emitted directly from combustion processes but consists predominantly of secondary particles, such as sulfate-based particles (produced from SO_x), nitrate-based particles (produced from NO_x), and carbon-based particles created through transformation of VOC emissions. Mobile sources can reasonably be estimated to contribute to ambient secondary nitrate, sulfate and carbonaceous PM in proportion to their contribution to total NO_x, SO, and VOC emissions.

In 1997, 8 million Americans were living in 13 counties that exceeded the recently revised PM₁₀ standard, and PM₁₀ problems are projected to persist in the absence of further actions to control PM₁₀ levels. Table III-8 presents estimates of the extent of PM₁₀ and PM_{2.5} nonattainment in the future. In the NAAQS RIA, we projected that in 2010, eleven counties with a combined 1990 population of about 10 million people would not be in attainment with the revised PM₁₀ standards.²¹ About half of the affected population lives outside of California. In the same analysis, 102 counties were projected to violate the new PM_{2.5} NAAQS, with a combined 1990 population of about 55 million people. About 75 percent of the affected population lives outside of California. (More information about this analysis and its uncertainties may be found in the NAAQS RIA and the Tier 2 Report to Congress.) Ambient PM reductions from more stringent motor vehicle or fuel standards would primarily affect areas outside of California, because California has its own motor vehicle emission control program. California areas would also benefit, however, through the temporary travel and

permanent migration of out-of-state vehicles into California, as discussed above.

TABLE III-8.—PROJECTED 2010 PM₁₀/PM_{2.5} NONATTAINMENT COUNTIES AND POPULATIONS

	Outside California	California
Violating Original PM₁₀ NAAQS		
Number of Counties	33	12
1990 Population (millions)	11	7
Violating Revised PM₁₀ NAAQS		
Number of Counties	5	6
1990 Population (millions)	5	5
Violating New PM_{2.5} NAAQS		
Number of Counties	92	10
1990 Population (millions)	42	13

A significant number of areas are projected to exceed the PM₁₀ NAAQS in 2010 with existing emission controls, indicating that further PM and PM-precursor emission reductions will be needed. Because the bulk of PM emissions from motor vehicles are fine particles, any reduction in particulate emissions from motor vehicles aimed at reducing PM₁₀ levels would also reduce ambient levels of PM_{2.5}. As mentioned above, the number of counties projected to violate the new PM_{2.5} NAAQS is much larger than that for the revised PM₁₀ standards. Tier 2/Sulfur standards that reduce particulate emissions for the purposes of facilitating attainment with the PM₁₀ NAAQS could also benefit areas with elevated PM_{2.5} levels.

2. Reducing Emissions From Cars and Light Trucks Would Reduce Ambient Levels

Today's proposal would reduce PM levels by reducing direct PM emissions from cars and light trucks, and by reducing emissions of sulfur and nitrogen oxides that are converted to PM in the atmosphere. Direct PM emissions would be reduced in two ways. First, reductions in gasoline sulfur levels would reduce PM emissions from gasoline vehicles. Second, the more stringent PM standard included in today's proposal would reduce PM emissions from cars and light trucks equipped with diesel engines. Diesel engines are used in a small fraction of current cars and light trucks, but this

²¹ The methods used to project PM concentrations in 2010 from 1990 emissions and ambient concentration data introduce several sources of uncertainty. Also, the PM_{2.5} values are predicted from a regression model and hence are subject to the uncertainty associated with this model. Other uncertainties exist regarding emission inventory estimates from human and natural sources, monitoring data, and the models used to account for physical and chemical processes in the atmosphere. Even with the anticipated delivery of more comprehensive modeling techniques, the scarcity of speciated ambient PM data in both urban and rural areas to evaluate model behavior will continue to compromise the certainty of the best model-derived conclusions.

fraction could grow as discussed in III.C.3. below.

With no growth in diesel sales, we project today's action would reduce direct PM emissions from cars and light trucks mainly due to the introduction of low-sulfur gasoline. Sulfur-based particles account for a substantial portion of the particulate matter emitted by gasoline-powered vehicles. More stringent PM emission standards are not anticipated to alter PM emissions from gasoline vehicles but would result in reductions in diesel PM emissions. The

overall effect of today's proposal under this assumption would be to reduce direct exhaust PM emissions from cars and light trucks by 60 percent in 2007 and by 62–63 percent in 2015 and beyond. Tables III–9 and III–10 show the contribution of cars and light trucks to total PM₁₀ and PM_{2.5} emissions, and the reductions that would be obtained from today's proposal. The contribution of cars and light trucks to either PM inventory will generally be higher in urban areas than on a nationwide basis, and will vary from area to area. In 2007,

for example, cars and light trucks contribute 1.3 percent to the nationwide PM₁₀ inventory (excluding natural sources and fugitive dust). For comparison, this percentage is estimated to be 4.4 percent in Atlanta and 1.9 percent in the New York City metropolitan area.

Later in this section we discuss the possibility that sales of diesel-powered vehicles might increase from current levels, making the effect of the more stringent PM standard in this proposal larger.

TABLE III–9.—DIRECT EXHAUST PM₁₀ EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/SULFUR CONTROL^{a,b}

Year	Light-duty tons without tier 2	Light-duty percent of total without tier 2	Light-duty tons reduced by tier 2
2007	39,209	1.3	23,379
2010	41,412	1.4	25,239
2015	46,064	1.4	28,674
2020	51,102	1.5	32,031

^a For all cases, this table reflects continuation of current diesel engine usage in the light truck fleet and implementation of ROTR and other measures assumed in the ROTR.

^b The emission estimates shown exclude natural sources of PM and fugitive dust. They also do not include California (which has its own vehicle and fuel standards), Alaska, or Hawaii. Today's proposal would have additional emission benefits in these states.

TABLE III–10.—DIRECT EXHAUST PM_{2.5} EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/SULFUR CONTROL^{a,b}

Year	Light-duty tons without tier 2	Light-duty percent of total without tier 2	Light-duty tons reduced by tier 2
2007	36,365	1.7	21,687
2010	38,409	1.8	23,410
2015	42,724	1.9	26,595
2020	47,397	2.0	29,707

^a For all cases, this table reflects continuation of current diesel engine usage in the light truck fleet and implementation of ROTR and other measures assumed in the ROTR.

^b The emission estimates shown exclude natural sources of PM and fugitive dust. They also do not include California (which has its own vehicle and fuel standards), Alaska, or Hawaii. Today's proposal would have additional emission benefits in these states.

Even larger PM reductions would result from the reductions in the sulfur oxides (SO_x), NO_x, and VOC emissions that give rise to secondary PM that would result from today's proposal. The reduction in ambient PM levels that would come from the proposed reductions in these precursor emissions is about 6 to 7 times as large as the reduction from lower emissions of direct PM. Essentially all secondary PM is fine PM and hence is included in estimates of both PM₁₀ and PM_{2.5}.

We described the effect of today's proposal on VOC and NO_x emissions

above in Section III.B. Today's proposal also would reduce SO_x emissions from cars and light trucks by dramatically lowering the level of sulfur in gasoline, since gaseous SO_x emissions are dependent entirely on fuel sulfur level. In the absence of today's proposal, we project that SO_x emissions from cars and light trucks will increase steadily in conjunction with VMT growth, from approximately 216,000 tons in 2005 to 300,000 tons in 2020—an increase of almost 40 percent (total nationwide SO_x emissions from all sources was 20,000,000 tons in 1997). Today's

proposal would reduce SO_x emissions from all gasoline-powered engines, including cars, light trucks, heavy-duty gasoline vehicles, and gasoline-powered nonroad engines, in any year by 90 percent, once all gasoline meets the proposed sulfur limit. The same percentage reductions in SO_x emissions would occur in subsequent years. The absolute emission reduction increases with time, however, due to growth in VMT and nonroad engine use. Table III–11 shows the impact of today's proposal on SO_x emissions.

TABLE III-11.—SO_x EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/SULFUR CONTROL ^a

Year	Light-duty tons without tier 2	Light-duty percent of total without tier 2	Light-duty tons reduced by tier 2
2007	225,673	1.2	202,748
2010	240,694	1.3	216,437
2015	270,174	1.4	242,964
2020	299,959	1.6	269,756

^aThe emission estimates shown do not include California (which has its own vehicle and fuel standards), Alaska, or Hawaii. Today's proposal would have additional emission benefits in these states.

3. Today's Proposal Would Limit the Potential Health Risks From Increased Diesel Engine Use in Cars and Light Trucks

Of particular concern from a PM perspective is the possibility that diesels will become more prevalent in the light-duty truck fleet. This development is a reasonable possibility since vehicle and engine manufacturers have indicated their intent to sell more diesel-powered light-duty trucks and in some cases have made capital investments to implement these plans. The Partnership for a New Generation of Vehicles (PNGV), a public-private research and development effort that has been pursuing several promising technologies for greatly improved vehicle fuel economy combined with low emissions, has identified improved diesel engines as a technology likely to be able to deliver large fuel economy improvements in the near future, by about 2004. In order to assess the potential impact of increased diesel sales penetration on PM_{2.5} emissions, we analyzed benefits from our proposed Tier 2 PM standards under a scenario in which the use of diesel engines in light

trucks increases rapidly, by five percentage points per year from 2001 through 2010, when diesels would account for 50 percent of light-duty truck sales; beyond 2010, diesel sales were assumed to be stable at 50 percent of the light-truck market. Table III-12 presents the results of our analysis of this scenario.

This scenario of increased diesels would result in dramatic increases in direct PM_{2.5} emissions from cars and light trucks, if there is no change in the PM standards for light trucks. The increase in diesel exhaust PM_{2.5} emissions would more than overcome the reduction in direct PM_{2.5} attributable to the sulfur reduction in gasoline. Assuming no change in the existing PM standards for light trucks, our analysis of this scenario shows that direct PM_{2.5} emissions in 2020 would be approximately 140,000 tons, nearly three times the 47,000 tons projected in the base diesel sales case from Table III-10. The portion of the PM_{2.5} inventory attributable to cars and light trucks would climb steadily, reaching almost 6 percent in 2020 instead of the 2 percent shown in Table III-10 for a scenario

where diesel engines do not increase their presence in the light truck fleet. In some cities with relatively high vehicle use and lower industrial emissions, the car and truck contribution would be even higher.

This increase would be accompanied by increases in the mortality and morbidity associated with PM_{2.5} exposure. Fortunately, the standards being proposed today would result in a steady decrease in total direct PM_{2.5} from cars and light trucks despite a possible increase in diesel engines in light trucks. Direct PM emissions in 2020 with today's proposal would be about 25,000 tons per year, less than at present.

If this scenario for increased diesel engines in light trucks were to occur, today's proposal would reduce diesel PM_{2.5} by over 90 percent in 2020. Stated differently, by 2020 today's proposal would reduce over 113,000 tons of the potential increase in PM emissions from passenger cars and light trucks. The result would be less direct PM_{2.5} than is emitted today, because the increase in diesel PM would be more than offset by the reduction in gasoline PM.

TABLE III-12.—DIRECT EXHAUST PM_{2.5} EMISSIONS FROM LIGHT DUTY VEHICLES AND REDUCTIONS DUE TO TIER 2/ SULFUR CONTROL, WITH GREATER DIESEL ENGINE SALES ^{a,b}

Year	Light-duty exhaust tons without tier 2	Light-duty exhaust tons with tier 2	Light-duty tons reduced
2007	52,907	22,478	30,429
2010	72,626	22,542	50,084
2015	109,622	23,275	86,347
2020	138,177	24,754	113,424

^aFor all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR and an increase in diesel-powered light truck market share from 5 percent of light truck sales in 2001 to 50 percent in 2010 and beyond.

^bThe emission estimates shown exclude natural sources of PM and fugitive dust. They also do not include California (which has its own vehicle and fuel standards), Alaska, or Hawaii. Today's proposal would have additional emission benefits in these states.

4. Today's Proposal Would Have Substantial PM Benefits

In general, we project that today's proposal would reduce both direct and secondary PM from cars and light trucks substantially, regardless of the future market share for diesel engines in the

light-duty fleet. The larger part of the reduction is due to large reductions in VOC, NO_x, and SO_x emissions, with corresponding reductions in secondary PM formation.

Low sulfur fuel would greatly reduce direct PM emissions and sulfate-based

secondary PM formation from SO_x emissions from gasoline vehicles, while tailpipe PM standards are projected to mitigate excess PM emissions from diesel vehicles, even at very aggressive rates of diesel vehicle sales growth. Substantial reductions in NO_x

emissions would carry over to reductions in indirect PM. These reductions would help reduce the number of areas with PM₁₀ and PM_{2.5} levels in excess of national standards, reduce the severity of PM nonattainment in other areas, and help areas facing PM maintenance challenges stay in attainment.

The magnitude of the PM reductions from today's proposal in a given area depends on conditions such as the contribution of light-duty vehicles to the local PM, SO_x, NO_x, and VOC inventory; the contribution of light-duty vehicles to the PM, SO_x, NO_x, and VOC inventories in upwind areas; local and upwind ammonia inventories (involved in secondary PM formation); control measures being implemented on both local and upwind sources of PM and its precursors, and local meteorology. We have incorporated these factors into the air quality modeling used to develop the benefit/cost analysis presented in Section IV.D.5., which includes the economic benefits of the direct and secondary PM reductions expected to result from today's proposal.

The PM modeling results from that analysis suggest that if all cars and trucks used in 2010 met the emission standards being proposed today, significant PM reductions would result in urban and substantial PM reductions would result in much of the continental U.S. The annual average level of both PM₁₀ and PM_{2.5} was projected to decline by 0.25 to 0.64 micrograms per cubic meter (μg/m³) in many cities; average levels were projected to decline by 0.1 to 0.25 μg/m³ throughout most of the country east of the Great Plains, Nebraska, and parts of Colorado, Arizona, and other western states. Similarly, daily maximum PM levels²² were projected to decline substantially, with many cities projected to see declines of 0.75 to 4.5 μg/m³ and over half the continental U.S. projected to experience declines of 0.25 to 0.75 μg/m³. Note that this analysis assumed no growth in sales of diesel-powered light trucks. It also did not account for the direct PM reductions that would be achieved when the small number of diesel-powered trucks already being sold now will reduce their PM emissions to meet the lower proposed PM standard.

²² Daily maximum PM levels are the PM levels (averaged over 24 hours) for days that are projected to be in the 98th or 99th percentile when ranked by their PM_{2.5} and PM₁₀ levels, respectively.

D. Other Criteria Pollutants: Carbon Monoxide, Nitrogen Dioxide, Sulfur Dioxide

This proposal would help reduce levels of three other pollutants for which NAAQS have been established: carbon monoxide (CO), nitrogen dioxide (NO₂), and sulfur dioxide (SO₂). The extent of nonattainment for these three pollutants is small, so the primary effect of today's proposal would be to provide areas concerned with maintaining their attainment status a greater margin of safety. As of 1998, every area in the United States has been designated to be in attainment with the NO₂ NAAQS. As of 1997, only one area (Buchanan County, Missouri) did not meet the primary SO₂ short-term standard, due to emissions from the local power plant. In 1997, only 6 of 537 monitoring sites reported ambient CO levels in excess of the CO NAAQS; all six sites were located in California, which has established its own vehicle and fuel emission standards.

The reductions in SO₂ precursor emissions from today's proposal are essentially equal to the SO_x reductions described in Section III.B. and III.C., respectively. The impact of today's proposal on NO₂ emissions depends on the specific emission control technologies used to meet the standards being proposed today. However, essentially all of the NO_x emitted by cars and light trucks converts to NO₂ in the atmosphere; therefore, it is reasonable to assume that today's proposal would substantially reduce ambient NO₂ levels by the same proportion. Today's proposal also would require light trucks to meet more stringent CO standards; we will evaluate the impact of these standards more fully before publishing our final rule. The analysis of economic benefits and costs found in Section IV.D.-5. does not account for the economic benefits of the CO reductions expected to result from today's proposal.

E. Visibility

Visibility impairment occurs as a result of the scattering and absorption of light by particles and gases in the atmosphere. It is most simply described as the haze that obscures the clarity, color, texture, and form of what we see. The principal cause of visibility reduction is fine particles between 0.1 and 1 μm in size. Of the pollutant gases, only NO₂ absorbs significant amounts of light; it is partly responsible for the brownish cast of polluted skies. While the contribution of NO₂ to visibility impairment varies from area to area, it

is generally responsible for less than ten percent of visibility reduction.

The CAA requires EPA to protect visibility, or visual air quality, through a number of programs. These programs include the national visibility program under Sections 169a and 169b of the Act, the Prevention of Significant Deterioration program for the review of potential impacts from new and modified sources, and the secondary NAAQS for PM₁₀ and PM_{2.5}. The national visibility program established in 1980 requires the protection of visibility in 156 mandatory federal Class I areas across the country (primarily national parks and wilderness areas). More than 65 million visitors travel each year to these parks and wilderness areas. The CAA established as a national visibility goal, "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory federal Class I areas in which impairment results from manmade air pollution." The Act also calls for state programs to make "reasonable progress" toward the national goal. In addition, a recent national opinion poll on the state of the national parks found that more than 80 percent of Americans believe air pollution affecting these parks should be cleaned up for the benefit of future generations.²³

There has been improvement in visibility in the western part of the country over the last ten years. However, visibility impairment remains a serious problem in Class I areas. Visibility in the East does not seem to have improved. As one part of addressing this national problem, EPA has proposed that states be required to adopt and implement effective plans for protecting and improving visibility in Class I federal areas (including 156 major national parks and wilderness areas), integrated with plans to achieve the revised ozone and PM standards.

Today's proposal should result in visibility improvements due to the reduction in local and upwind PM and PM precursor emissions. Since mobile source emissions contribute to the formation of visibility-reducing PM, control programs that reduce the mobile source emissions of direct and secondary PM would have the effect of improving visibility. The Grand Canyon Visibility Transport Commission's final recommendations report²⁴ found that

²³ "National Parks and the American Public: A National Public Opinion Survey on the National Park System," Summary Report, National Parks and Conservation Association, June 1998.

²⁴ "Recommendations for Improving Western Vistas," Report of the Grand Canyon Visibility Transport Commission to the United States Environmental Protection Agency, June 10, 1996.

reducing total mobile source emissions is an essential part of any program to protect visibility in the Western U.S. The Commission found that motor vehicle exhaust is responsible for about 14 percent of human-caused visibility reduction (excluding road dust). A substantial portion of motor vehicle exhaust comes from cars and light trucks. In light of that impact, the Commission's recommendations in 1996 supported federal Tier 2/Sulfur standards, as EPA is proposing today. More recently, a number of Western Governors noted the importance of controlling mobile sources as part of efforts to improve visibility in their comments on the Regional Haze Rule and on the need to protect the 16 Class I areas on the Colorado Plateau. In their joint letter dated June 29, 1998, they stated that, " * * * the federal government must do its part in regulating emissions from mobile sources that contribute to regional haze in these areas. * * * " and called on EPA to make a "binding commitment * * * to fully consider the Commission's recommendations related to the * * * federal national mobile source emission control strategies." These recommendations included Tier 2 vehicle standards and reductions in gasoline sulfur levels.

As an indication of how important car and light truck emissions can be to fine PM and visibility, the recent Northern Front Range Air Quality Study has reported findings that indicate that cars and light trucks are responsible for 39 percent of fine PM at a site within the metropolitan Denver area, and for 40 percent at a downwind rural site. This contribution includes both direct PM and indirect PM formed from sulfur dioxide and NO_x from these vehicles.

The analysis of economic benefits and costs found in Section IV.D.5. accounts for the economic benefits of the visibility improvements expected to result from today's proposal.

F. Air Toxics

Emissions from cars and light trucks include a number of air pollutants that are known or suspected human or animal carcinogens such as benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and diesel particulate matter, or that are known or suspected to have other, non-cancer health impacts. For several of these pollutants, motor vehicle emissions are believed to account for a significant proportion of total nation-wide emissions. All of these compounds are present in exhaust emissions; benzene is also found in evaporative emissions from gasoline-fueled vehicles.

The health effects of diesel particulate are of particular relevance to this rulemaking, because of the possibility for increased diesel-powered truck sales and our proposal for a more stringent PM standard that would apply to these trucks. While we have not finalized our decision about the carcinogenicity of diesel exhaust particulate, we are in the process of addressing this question. Several other agencies and international organizations have already made such a determination, including the California Air Resources Board (ARB). Our own quantitative risk assessment for diesel particulate is still in draft form,²⁵ and is presently being revised to address the comments of a peer review panel of the Clean Air Science Advisory Committee.

Because our assessment for diesel particulate is not complete, we are not presenting absolute estimates of how potential cancer risks from diesel particulate could be affected by today's proposal. However, we can give a qualitative or relative discussion. Diesel engines are used in a very small portion of the cars and light-duty trucks in service today. By far, heavy duty highway and nonroad diesel engines are the larger source of diesel PM. Engine and vehicle manufacturers have projected that diesel engines are likely to be used in an increasing share of light trucks, and some manufacturers have announced capital investments to build such engines.

If these projections are valid and the proportion of light-duty trucks powered by diesel engines increases, the potential health risks from diesel PM could increase substantially. Light trucks could become a larger source of diesel PM than heavy-duty diesel trucks. We estimate that if the percentage of light duty diesel truck sales were to increase to 50 percent of light-duty truck sales by 2010, the increased presence of light duty diesel trucks on the nation's roads could increase the potential cancer risks associated with PM emissions from all diesel-powered highway vehicles (including heavy-duty diesel trucks, diesel buses, and light-duty diesel vehicles) by approximately 130 percent as of 2020, under the current light-duty diesel PM standards. Though the actual

levels of diesel engine use may be considerably different than the projections used in both analyses, the analyses are useful in illustrating the potential impact of increased diesel engine use in light trucks.

Today's proposal would limit the increase in the potential cancer risks from cars and light trucks associated with any potential increase in light-duty diesel sales. We have estimated that in 2020, today's proposal would limit the increase in total highway diesel PM emissions due to growth in light truck diesels to 24 percent, in contrast to the more than doubling that would occur without our proposal for a tighter PM standard for light trucks. The comparison in terms of potential cancer risk from car and light truck diesel PM likely would closely follow this emissions comparison.

The VOC emission reductions resulting from today's proposal would further reduce the potential cancer risk posed by air pollutants other than diesel PM emitted by cars and light trucks, since many of these pollutants are themselves VOCs. The analysis of economic benefits and costs found in Section IV.D.5. does not account for the economic benefits of the reduction in cancer risk from air toxics that could result from today's proposal, because we have not yet completed our study of this issue or engaged in a peer-reviewed assessment of the baseline air toxics risks (including a final quantitative risk assessment of the diesel particulate risks) or of the reductions that would be achieved by today's proposal. Therefore, the estimates included in the Draft RIA should be considered preliminary. A peer-reviewed assessment is planned and may be completed in time to be available for incorporation into the impact analysis for the final rule. EPA will place this document in the docket as soon as it is available for public review.

Section 202(l)(2) of the Clean Air Act requires EPA to establish regulations for the control of hazardous air pollutants, or air toxics, from motor vehicles. The regulations may address vehicle emissions or fuel properties that influence emissions, or both. We will issue a proposal to address this requirement in September of this year, and a final rule in July 2000.

G. Acid Deposition²⁶

Acid deposition, or acid rain as it is commonly known, occurs when SO₂

²⁵ EPA's diesel health assessment (Health Assessment Document for Diesel Emissions, SAB Review Draft, U.S. Environmental Protection Agency, Washington, DC. EPA/600/8-90/057C, February 1998.) can be found at the following EPA website: <http://www.epa.gov/ncea/diesel.htm>. The Clean Air Science Advisory Committee's review of that assessment (CASAC Review of the Draft Diesel Health Assessment Document, U.S. Environmental Protection Agency Science Advisory Board, Washington, DC EPA-SAB-CASC-99-001.) can be found at the following SAB website: <http://www.epa.gov/sab/>.

²⁶ Much of the information in this section was excerpted from the EPA document, Human Health Benefits from Sulfate Reduction, written under Title IV of the 1990 Clean Air Act. Amendments, U.S. EPA, Office of Air and Radiation, Acid Rain Division, Washington, DC 20460, November 1995.

and NO_x react in the atmosphere with water, oxygen, and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles. It contributes to damage of trees at high elevations and in extreme cases may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. To reduce damage to automotive paint caused by acid rain and acidic dry deposition, some manufacturers use acid-resistant paints, at an average cost of \$5 per vehicle—a total of \$61 million per year if applied to all new cars and trucks sold in the U.S. The general economic and environmental effects of acid rain are discussed at length in the Draft RIA.

Acid deposition primarily affects bodies of water that rest atop soil with a limited ability to neutralize acidic compounds. The National Surface Water Survey (NSWS) investigated the effects of acidic deposition in over 1,000 lakes larger than 10 acres and in thousands of miles of streams. It found that acid deposition was the primary cause of acidity in 75 percent of the acidic lakes and about 50 percent of the acidic streams, and that the areas most sensitive to acid rain were the Adirondacks, the mid-Appalachian highlands, the upper Midwest and the high elevation West. The NSWS found that approximately 580 streams in the Mid-Atlantic Coastal Plain are acidic primarily due to acidic deposition. Hundreds of the lakes in the Adirondacks surveyed in the NSWS have acidity levels incompatible with the survival of sensitive fish species. Many of the over 1,350 acidic streams in the Mid-Atlantic Highlands (mid-Appalachia) region have already experienced trout losses due to increased stream acidity. Emissions from U.S. sources contribute to acidic deposition in eastern Canada, where the Canadian government has estimated that 14,000 lakes are acidic. Acid deposition also has been implicated in contributing to degradation of high-elevation spruce forests that populate the ridges of the Appalachian Mountains from Maine to Georgia. This area includes national parks such as the Shenandoah and Great Smoky Mountain National Parks.

The SO_x and NO_x reductions from today's proposal would help reduce acid rain and acid deposition, thereby helping to reduce acidity levels in lakes and streams throughout the U.S. These reductions would help accelerate the

recovery of acidified lakes and streams and the revival of ecosystems adversely affected by acid deposition. Reduced acid deposition levels would also help reduce stress on forests, thereby accelerating reforestation efforts and improving timber production. Deterioration of our historic buildings and monuments, and of buildings, vehicles, and other structures exposed to acid rain and dry acid deposition, also would be reduced, and the costs borne to prevent acid-related damage may also decline.

While the reduction in sulfur and nitrogen acid deposition would be roughly proportional to the reduction in SO_x and NO_x emissions, respectively, the precise impact of today's proposal would differ across different areas. Each area is affected by emissions from different source regions, and the mobile source contribution to the total SO_x and NO_x emission inventory will differ across different source regions. Nonetheless, the projected impact of today's proposal on SO_x and NO_x emission inventories provides a rough indicator of the likely effect of today's proposal on acid deposition. As discussed in Section III.D. above, today's proposal would reduce SO_x emissions by 1.6 percent and NO_x emissions by 12.5 percent in 2020.

The analysis of economic benefits and costs found in Section IV.D.5. was not able to account for the economic benefits of the reduction in acid deposition expected to result from today's proposal.

H. Eutrophication/Nitrification

Nitrogen deposition into bodies of water can cause problems beyond those associated with acid rain. Elevated levels of nitrate in drinking water pose significant health risks, especially to infants. The Ecological Society of America has included discussion of the contribution of air emissions to increasing nitrogen levels in surface waters in a recent major review of causes and consequences of human alteration of the global nitrogen cycle in its *Issues in Ecology* series.²⁷ Long-term monitoring in the United States, Europe, and other developed regions of the world shows a substantial rise of nitrogen levels in surface waters, which are highly correlated with human-generated inputs of nitrogen to their watersheds. These nitrogen inputs are

dominated by fertilizers and atmospheric deposition.

Human activity can increase the flow of nutrients into those waters and result in excess algae and plant growth. This increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can also adversely affect fish and shellfish populations. This problem is of particular concern in coastal areas with poor or stratified circulation patterns, such as the Chesapeake Bay, Long Island Sound, or the Gulf of Mexico. In such areas, the "overproduced" algae tends to sink to the bottom and decay, using all or most of the available oxygen and thereby reducing or eliminating populations of bottom-feeder fish and shellfish, distorting the normal population balance between different aquatic organisms, and in extreme cases causing dramatic fish kills.

Collectively, these effects are referred to as eutrophication, which the National Research Council recently identified as the most serious pollution problem facing the estuarine waters of the United States (NRC, 1993). Nitrogen is the primary cause of eutrophication in most coastal waters and estuaries.²⁸ On the New England coast, for example, the number of red and brown tides and shellfish problems from nuisance and toxic plankton blooms have increased over the past two decades, a development thought to be linked to increased nitrogen loadings in coastal waters. Airborne NO_x contributes from 12 to 44 percent of the total nitrogen loadings to United States coastal water bodies. For example, approximately one-quarter of the nitrogen in the Chesapeake Bay comes from atmospheric deposition.

Excessive fertilization with nitrogen-containing compounds can also affect terrestrial ecosystems.²⁹ Research suggests that nitrogen fertilization can alter growth patterns and change the balance of species in an ecosystem. In

²⁸ Much of this information was taken from the following EPA document: *Deposition of Air Pollutants to the Great Waters-Second Report to Congress*, Office of Air Quality Planning and Standards, June 1997, EPA-453/R-97-011.

²⁹ Terrestrial nitrogen deposition can act as a fertilizer. In some agricultural area, this effect can be beneficial.

²⁷ Vitousek, Peter M., John Aber, Robert W. Howarth, Gene E. Likens, et al. 1997. Human Alteration of Global Nitrogen Cycle: Causes and Consequences. *Issues in Ecology*. Published by Ecological Society of America, Number 1, Spring 1997.

extreme cases, this process can result in nitrogen saturation when additions of nitrogen to soil over time exceed the capacity of the plants and microorganisms to utilize and retain the nitrogen. This phenomenon has already occurred in some areas of the U.S.

Deposition of nitrogen from cars and light trucks contributes to these problems. As discussed in Section III.B. above, today's proposal would reduce total NO_x emissions by 12.5 percent in 2020. These reductions should reduce drinking water nitrate levels by reducing the amount of nitrate deposited from the atmosphere onto drinking water sources or onto the watersheds of drinking water sources by similar amounts. The NO_x reductions would also reduce the eutrophication problems associated with atmospheric deposition of nitrogen into watersheds and onto bodies of water, particularly in aquatic systems where atmospheric deposition of nitrogen represents a significant portion of total nitrogen loadings. Since air deposition accounts for 12–44 percent of total nitrogen loadings in coastal waters, the 12.5 percent reduction in NO_x from today's proposal are projected to reduce nitrogen loadings by 1.5–5.5 percent. To put these reductions in perspective, the reductions expected in the Chesapeake Bay area would amount to about 6 percent of the total reduction in nitrogen loading needed to maintain the reduction in nutrient loads agreed to by the signatory states in the Chesapeake Bay Agreement (40 percent of "controllable by the year 2000).

The analysis of economic benefits and costs found in Section IV.D.5. does not account for the economic benefits of reduced drinking water nitrate levels and reduced terrestrial nitrogen deposition expected to result from today's proposal, if implemented. The analysis does, however, account for the economic benefits of reduced eutrophication.

I. Conclusion: Cleaner Cars and Light Trucks Are Critically Important to Improving Air Quality

Despite continued progress in reducing emissions from cars and light trucks, these vehicles will continue to contribute a substantial share of the ozone and PM precursors in current and projected nonattainment areas, and in upwind areas whose emissions contribute to downwind nonattainment, unless additional measures are taken to reduce their emissions. These vehicles will also continue to contribute to the ambient PM that affects visibility in Class I federal areas and some urban areas. Emissions from cars and light

trucks also play a significant role in a wide range of health and environmental problems, including known and potential cancer risks from inhalation of air pollutants (a problem that could become more significant if sales of diesel-powered cars and light trucks were to increase), health risks from elevated drinking water nitrate levels, acidification of lakes and streams, and eutrophication of inland and coastal waters.

Today's proposal would reduce NO_x, VOC, CO, PM, and SO_x emissions from these vehicles substantially. These reductions would help reduce ozone levels nationwide and reduce the extent and severity of violations of both the 1-hour and 8-hour ozone standards. These reductions would also help reduce PM levels, both by reducing direct PM emissions and by reducing emissions that give rise to secondary PM. The NO_x and SO_x reductions would help reduce acidification problems, and the NO_x reductions would help reduce eutrophication problems and drinking water nitrate levels. The PM standards proposed today would help improve visibility and would help mitigate the adverse health effects due to possible increases in light-duty diesel engine sales.

Section IV.D.5. of this preamble describes the comprehensive analysis EPA has made of the net economic benefit of the requirements we are proposing today. In that analysis, we have quantified many of the public health and environmental benefits of the actions on an annual, national scale. Estimates of the economic value of these effects have been made for as many of the effects as possible, and compared to the cost of compliance. This rulemaking is the first instance in which EPA has conducted such a cost-benefit analysis for a set of proposed vehicle emission standards.

IV. What Are We Proposing and Why?

In the previous section, we showed why many states need as much emission reduction as is reasonably possible from LDVs and LDTs—plus reductions from other sources—if they are to reach and maintain compliance with the 1-hour and 8-hour ozone NAAQS. We also pointed out that these reductions would also be important in addressing PM and other air quality and environmental problems in every major region of the country.

In this section, we describe the comprehensive vehicle/fuel program we are proposing to respond to these serious air quality needs. Specifically, we discuss:

- Our reasons for proposing a comprehensive vehicle and fuel program, including why stringent LDV and LDT standards are feasible in conjunction with low sulfur gasoline.
- Our proposed vehicle-related requirements and our rationales for proposing them.
- Our proposed fuel-related requirements and our rationales.
- Our projections of the economic impacts, cost effectiveness, and monetized environmental and health benefits of the proposed program.
- Other program design options we have considered.

A. Why Are We Proposing Vehicle and Fuel Standards Together?

1. Feasibility of Stringent Standards for Light-Duty Vehicles and Light-Duty Trucks.

a. Gasoline Fueled Vehicles. We believe that the standards being proposed today for gasoline-fueled vehicles are well within the reach of existing control technology. Our proposed determination of feasibility is based on the use of catalyst-based strategies that are already in use and are well proven on the existing fleet of vehicles. In fact, as you will see below, many current engine families are already certified to levels at or below the proposed new Tier 2 requirements. All of the certification and research testing discussed below was performed on low-sulfur test fuel (nominally 30 ppm).

Certainly, larger vehicles and trucks, which are heavier and have larger frontal areas, will face the biggest challenges. However, conventional technology will be sufficient for even these vehicles, especially in light of the extra leadtime we have provided before LDT3s and LDT4s have to meet Tier 2 levels. We are also proposing to change the test conditions for these trucks from "adjusted loaded vehicle weight" to "loaded vehicle weight." Adjusted loaded vehicle weight, suitable for commercial truck operation, loads the truck to half of its full payload. Loaded vehicle weight, on the other hand, represents curb weight plus 300 pounds. The proposed change more accurately reflects how these vehicles are used and makes heavy LDT testing consistent with passenger car and light LDT testing. This change will make it substantially easier for the heavier trucks to meet our proposed standards.

Emission control technology has evolved rapidly in recent years. Emission standards applicable to 1990 model year vehicles required roughly 90% reductions in exhaust HC and CO

emissions and a 75% reduction in NO_x emissions compared to uncontrolled emissions. Today, some vehicles currently in production are well below these levels, showing overall emissions reductions of all three of these pollutants. These vehicles' emissions are well below those necessary to meet the current federal Tier 1 and even California Low-Emission Vehicle (LEV) standards. The reductions have been brought about by ongoing improvements in engine air-fuel management hardware and software plus improvements in catalyst designs, all of which are described fully in the Draft RIA.

The types of changes being seen on current vehicles have not yet reached their technological limits and continuing improvement will allow both LDVs and LDTs to meet the proposed standards. The Draft RIA describes a range of specific techniques that we believe could be used. These range from improved computer software and engine air-fuel controls to increases in precious metal loading and other exhaust system/catalyst system improvements. All of these technologies are currently used on one or more production vehicle models. There is no need to invent new approaches or technologies. The focus of the effort is primarily development, application, and optimization of these existing technologies.

We can gain significant insight into the difficulty of meeting the proposed new standards by looking at current full-life certification data. There are at least 48 engine family-control systems combinations certified in 1999 at levels below the Tier 2 NO_x standard of 0.07 g/mi. Of these, 35 also have hydrocarbon levels of 0.09 g/mi or below. Looking at a somewhat higher threshold to identify vehicles certified near the proposed standard, there are an additional 113 car and light truck

families certified at levels between 0.07 g/mi and 0.10 g/mi NO_x.

All of the above vehicles are already able, or close to being able, to certify to our proposed standards. The further reductions needed are those to provide an ample safety margin, or cushion, between the certified level and the emission standard. The degree of compliance margin required is a function of a variety of factors designed to provide the manufacturer a high confidence that production vehicles will meet the standards in-use over their useful life. Historically, these determinations are manufacturer specific, with cushions generally growing smaller as standards decline (reflecting more precision and repeatability in vehicle performance as more sophisticated controls are developed). The 1999 certification data reflects compliance cushions from as little as 20 percent below the standard to as high as 80 percent below the standard.

The cushion to be expected for Tier 2 vehicles is difficult to establish, although some manufacturers claim a cushion of 50 percent below the standard would be needed. We believe that manufacturers would strive to use the smallest cushions possible in order to minimize the impacts of the standards on their vehicles. Looking at 1999 certification data from this perspective and using a threshold of 0.04 g/mi NO_x, there are fully 22 engine family-control system configurations at or below the 0.04 g/mi level (one of which is a LDT4). Thus, even at such low levels, current technology is already demonstrating the performance that would be necessary to meet the proposed standards.

Since the most difficult compliance effort would be faced by the larger LDTs, we have undertaken a technology demonstration program aimed at lowering the emissions of a large 1999

LDT3 vehicle. This vehicle has a high horsepower engine, four wheel drive, and a curb weight of 4,500 pounds (GVWR³⁰ of 6,100 lbs). The exhaust system of the vehicle was modified to incorporate two close-coupled and two underfloor catalytic converters. The catalytic converters were aged to full useful life conditions using the accelerated aging methods described by Theiss.³¹ For further details of the modifications to this vehicle, please refer to the draft RIA.

In our initial work we made no attempts to alter the calibration of the electronic engine controls. In this configuration, the vehicle achieved emissions levels of 0.060 ± 0.002 g/mi NO_x and 0.09 ± 0.01 g/mi NMHC. Thus, by these straightforward modifications to the catalyst system based upon existing catalyst hardware, this vehicle was able to reach the proposed Tier 2 levels. In order to achieve additional reductions in the test vehicle's emissions, we are planning further work consisting largely of elimination of fuel cut-offs during decelerations, slight increases in EGR, and a minor degree of air injection during cold-start. However, given the amount of leadtime before any of the proposed Tier 2 standards would begin, we believe that the work already done clearly shows the feasibility of our proposal, even for large light-duty trucks.

Figure IV.A.-1 shows the results of our testing in comparison to the California LEV-1 standards applicable to this vehicle, and the proposed Tier 2 standards.

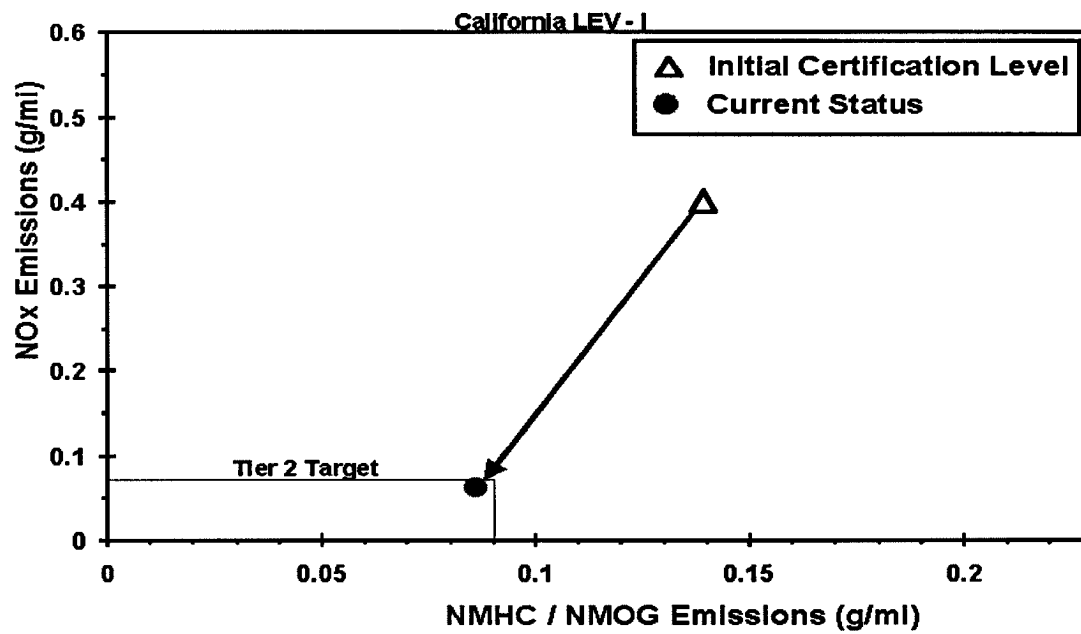
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³⁰ Gross Vehicle Weight Rating. The curb weight of the vehicle plus its maximum recommended load of passengers and cargo.

³¹ Theiss, J.R., "Catalytic Converter Diagnosis Using the Catalyst Exotherm," SAE Technical Paper Series, Paper No. 942058, SAE Fuels and Lubricants Meeting and Exposition, Baltimore, MD, October 17-20, 1994.

Figure IV.A.-1

Emission Results - 1999 Light-Duty Truck as Modified by EPA



One of the challenges facing larger truck catalyst systems is overtemperature protection. Because of this, our work on this vehicle included temperature evaluation of the catalyst under maximum load conditions. We found that the original fuel calibration for the truck provided sufficient enrichment under wide-open-throttle conditions to prevent exceeding the catalyst bed temperature limits (-950 to 1000°C) specified by the manufacturer of the catalytic converters. We conducted chassis dynamometer testing over the aggressive US06 cycle with the dynamometer inertia greatly increased to simulate full GVWR load conditions (6,100 lbs) for the pickup. Catalyst bed temperatures did not exceed 850°C at any point during the testing.

In addition to the EPA work, others have conducted several test programs recently that help demonstrate the feasibility of our proposed levels. The Coordinating Research Council (CRC), automobile manufacturers, and the American Petroleum Institute (API) all tested a number of light-duty vehicles capable of complying with the California LEV or ULEV standards as part of an evaluation of the effects of sulfur levels on emissions. Of the vehicles tested, seven met or nearly met the Tier 2 design targets, and all were below the proposed 0.07 g/mi NO_x and 0.09 g/mi NMOG standards.

Another program sponsored by MECA took two LDVs (a Crown Victoria and a Buick LeSabre) and one LDT2 (a Toyota T100) certified to the federal Tier 1 standards and replaced the original catalytic converters with more advanced catalytic converters, thermally aged to roughly 50,000 miles. With these systems and some related emission control modifications, all three vehicles' emissions were well below our proposed 50,000 mile standards (0.05 g/mi NO_x , 0.075 g/mi NMOG), and the Buick and the Toyota LDT2 met our estimated design targets for those standards.

Finally, the California Air Resources Board (ARB) tested six different production LEV light-duty vehicle models. Two of the six models met the proposed Tier 2 design targets for NMOG and NO_x . After installing low mileage advanced catalytic converters and making some minor adjustments, all of the vehicles had emission levels well below the proposed Tier 2 NMOG and NO_x design targets. ARB also tested several Ford Expeditions (LDT4) equipped with advanced catalytic converters. By adjusting several parameters, they were able to reduce NO_x emissions to 0.06 g/mi and NMOG

to 0.07 g/mi with a catalyst aged to 50,000 miles of use.

Neither the MECA nor the ARB test programs modified the basic engine calibrations of the vehicles tested. It is very likely that such recalibration could reduce emissions even further. Therefore, we consider these actual test results to be a conservative estimate of the capability of these advanced catalytic converters. This is especially true for the Ford Expedition testing by ARB, where the engine software appeared to modify its own calibration with the new catalyst, counteracting some of the advantages of the new catalyst.

A more expanded analysis of the feasibility of the proposed standards for gasoline fueled vehicles can be found in the Draft RIA, considering the types of changes that will allow manufacturers to extend effective new controls to the entire fleet of affected vehicles. That analysis includes discussion of gasoline direct-injection engines, as well as the feasibility of the proposed CO , formaldehyde and evaporative emission standards. The conclusion of all of our analyses is that the proposed standards would be feasible for gasoline-fueled vehicles operated on low-sulfur gasoline. As gasoline-fueled vehicles represent the overwhelming majority of the light-duty vehicle and truck population, EPA proposes to find that the proposed standards would be feasible overall for LDVs and LDTs.

b. *Diesel Vehicles.* As outlined above, we have decided to propose standards that are intended to be "fuel neutral." In today's document, we propose to find that the Tier 2 standards are technologically feasible and cost-effective for light-duty vehicles and light-duty trucks overall, based on the discussion in Section IV.A.1.a. above. Under the principal of fuel neutrality, all cars and light trucks, including those using diesel engines, would be required to meet the proposed Tier 2 standards. EPA believes that the proposed program, including the phase-in periods, would facilitate the advancement of clean diesel engine technologies. EPA further believes that in the long term the standards would be within reach for diesel-fueled vehicles in combination with appropriate changes to diesel fuel to facilitate aftertreatment technologies.

As with gasoline engines, manufacturers of diesels have made abundant progress over the past 10 years in reducing engine-out emissions from diesel engines. In heavy trucks and buses, PM emission standards, which were projected to require the use of exhaust aftertreatment devices, were

actually met with only engine modifications. NO_x emissions from heavy trucks and buses sold starting in 2002 will also reflect deep reductions from emission levels typical of engines produced in the mid-1980's. Indeed, emissions and performance of lighter diesel engines are rapidly approaching the characteristics of gasoline engines, while retaining the durability and fuel economy advantages that diesels enjoy. Against this background of continuing progress, we believe that the technological improvements that would be needed could be made in the time that would be available before diesels would have to meet the new Tier 2 standards.³²

While reductions in "engine-out" emissions, including incorporation of EGR strategies, will continue to be made, increasing emphasis is being placed on various aftertreatment devices for diesels. This is because further reductions in engine-out emissions will be unlikely, by themselves, to allow diesels to comply with the proposed Tier 2 standards for NO_x and PM. Rather, diesels would require the use of highly effective aftertreatment devices.

For NO_x emissions, potential aftertreatment technologies include lean NO_x catalysts, NO_x adsorbers and selective catalytic reduction (SCR). Lean NO_x catalysts are still under development, but generally appear capable of reducing NO_x emissions by about 15–30%. This efficiency is not likely to be sufficient to enable compliance with the proposed Tier 2 standards, but it could be used to meet the interim standards that would begin in 2004.

NO_x adsorbers appear to be up to 90% efficient at removing NO_x from the exhaust. Efficiency in this range is likely to be sufficient to enable compliance with the proposed Tier 2 standards. NO_x adsorbers temporarily store the NO_x and thus the engine must be run periodically for a brief time with excess fuel, so that the stored NO_x can be released and converted to nitrogen and oxygen using a conventional three-way

³² We generally expect that manufacturers would take advantage of the flexibilities in today's proposal to delay the need for diesel vehicles to meet the final Tier 2 levels until late in the phase-in period. Because diesel vehicles represent a very small percentage of the LDV/LDT market, diesels would not fall under the final Tier 2 standards until 2009, giving manufacturers a relatively large amount of leadtime. As discussed below, we are issuing an Advance Notice of Proposed Rulemaking intended to solicit comment on the need for reduced sulfur in diesel fuel in order to meet these standards. We also believe that the proposed interim standards would be feasible for diesels by 2004, with or without the fuel change, given the flexibilities associated with those standards.

catalyst, like that used on current gasoline vehicles.

There is currently a substantial amount of development work being directed at NO_x adsorber technology. While there are technical hurdles to be overcome, progress is continuing and it is our judgement that the technology should still be available by the time it would be needed for the proposed Tier 2 standards.

One serious concern with current NO_x adsorbers is that they are quickly poisoned by sulfur in the fuel. Some manufacturers have strongly emphasized their belief that, in order to meet the Tier 2 levels, low sulfur diesel fuel would also be required to mitigate or prevent this poisoning problem. One solution would be to reduce sulfur to very low levels. Another solution would be to reduce sulfur somewhere below current levels and develop a way to periodically remove the sulfur from the adsorber. In any event, this technique, if used, would also require low sulfur diesel fuel.

SCR has been demonstrated commercially on stationary diesel engines and can reduce NO_x emissions by 80–90%. This efficiency would be sufficient to enable compliance with the proposed Tier 2 standards. However, SCR requires that the chemical urea be injected into the exhaust before the catalyst to assist in the destruction of NO_x. The urea must be injected at very precise rates, which is difficult to achieve with an on-highway engine, because of widely varying engine operating conditions. Otherwise, emissions of ammonia, which have a very objectionable odor, can occur. Substantial amounts of urea are required, meaning that vehicle owners would have to replenish their vehicles' supply of urea frequently. As the engine and vehicle will operate satisfactorily without the urea (only NO_x emissions would be affected), some mechanism would be needed to ensure that vehicle owners maintained their supply of urea. Otherwise, little NO_x emission reduction would be expected in-use.

Regarding PM, applicable aftertreatment devices tend to fall into two categories: oxidation catalysts and traps. Diesel oxidation catalysts can reduce total PM emissions by roughly 15–30%. They would need to be used in conjunction with further reductions in PM engine-out emissions in order to meet the proposed Tier 2 standards. Diesel particulate traps, on the other hand, can eliminate up to 90% of diesel PM emissions. However, some of the means of accomplishing the regeneration of particulate traps involve catalytic processes that also convert

sulfur dioxide in the exhaust to sulfate. These techniques, if used, would also require a low sulfur fuel.

Since we have noted that some of the options for diesel aftertreatment may require lower sulfur diesel fuel than is currently available, the question of diesel fuel quality improvement arises. Manufacturers have argued that low sulfur diesel fuel will be required to permit diesels to meet the proposed new standards. While we believe that low sulfur diesel fuel would likely be required to enable diesel engines to meet the proposed Tier 2 standards, this proposal does not include provisions for such fuel. We need additional information about the specific aftertreatment solutions that could be used to meet the standards, the effectiveness of these approaches in reducing PM and NO_x emissions and their sensitivity to diesel sulfur, and improvements or alternatives that might reduce the impacts of fuel sulfur.

To deal more thoroughly with this matter, we are issuing an Advanced Notice of Proposed Rulemaking on a parallel path with today's Tier 2 proposal. As a part of that process, EPA will assess the effect of low-sulfur fuel on the ability of diesels to meet Tier 2 standards for LDVs and LDTs. It will also consider the issue of the relation of diesel fuel quality to future standards for heavy-duty on-highway diesel engines and nonroad diesel engines. Our plans for this Advanced Notice are discussed further in section IV.C. below. In any case, we believe that the standards proposed today are appropriate and feasible overall for LDVs and LDTs.

2. Gasoline Sulfur Control Is Needed To Support the Proposed Vehicle Standards

As we discussed in the previous section, we believe that the stringent standards we propose are needed to meet air quality goals are feasible for LDVs and LDTs. At the same time, we believe that for these standards to be feasible for gasoline LDVs and LDTs, low sulfur gasoline must be made available. The following paragraphs explain why we think gasoline sulfur control must accompany Tier 2 vehicle standards.

Catalyst manufacturers generally use low sulfur gasoline in the development of their catalyst designs. Vehicle manufacturers then equip their vehicles with these catalysts and EPA certifies them to the exhaust emission standards, usually based on testing the manufacturer does using low sulfur gasoline. However, fundamental chemical and physical characteristics of exhaust catalytic converter technology

generally result in a significant degradation of emission performance when these vehicles use gasoline with sulfur levels common in most of the country today. This sensitivity of catalytic converters to gasoline sulfur varies somewhat depending on a number of factors, some better understood than others. Clearly, however, as we discuss in the following paragraphs, gasoline sulfur's impact is large, especially in vehicles designed to meet very low emission standards like those proposed today.

This is the reason EPA has decided to propose a comprehensive approach to addressing emissions from cars and light trucks, including provisions to get low sulfur gasoline into the field in the same time frame needed for Tier 2 vehicles. (We discuss the related fact that the sulfur impact on catalyst performance is not fully reversible in Section IV.C. below, in the context of EPA's preference for a nationwide versus a regional gasoline sulfur control program, and in the Draft RIA.)

a. How Does Gasoline Sulfur Affect Vehicle Emission Performance? We know that gasoline sulfur has a negative impact on vehicle emission controls. Vehicles depend on the catalytic converter to reduce emissions of HC, CO, and NO_x. Sulfur and sulfur compounds attach or "adsorb" to the precious metal catalysts that are required to convert these emissions. Sulfur also blocks sites on the catalyst designed to store oxygen that are necessary to optimize NO_x emissions conversions. While the amount of sulfur contamination can vary depending on the metals used in the catalyst and other aspects of the design and operation of the vehicle, some level of sulfur contamination will occur in any catalyst.

Sulfur sensitivity is impacted not only by the catalyst formulation (the types and amounts of precious metals used in the catalyst) but also by factors including the following:

- the materials used to provide oxygen storage capacity in the catalyst, as well as the general design of the catalyst,
- the location of the catalyst relative to the engine, which impacts the temperatures inside the catalyst,
- the mix of air and fuel entering the engine over the course of operation, which is varied by the engine's computer in response to the driving situation and affects the mix of gases entering the catalyst from the engine, and
- the speeds the car is driven at and the load the vehicle is carrying, which

also impact the temperatures experienced by the catalyst.

Since these factors vary for every vehicle, the sulfur impact varies for every vehicle to some degree. There is no single factor that guarantees that a vehicle will be very sensitive or very insensitive to sulfur. We now believe that there are not (and will not be in the foreseeable future) emission control devices available for gasoline-powered vehicles that can meet the proposed Tier 2 emission standards that would not be significantly impaired by gasoline with sulfur levels common today.

b. How Large Is Gasoline Sulfur's Effect on Emissions? High sulfur levels have been shown to significantly impair the emission control systems of cleaner, later technology vehicles. The California LEV standards and Federal NLEV standards, as well as California's new LEV-II standards and our proposed Tier 2 standards, require catalysts to be extremely efficient to adequately reduce emissions over the full useful life of the vehicle. Recent test programs conducted by the automotive and oil industries show that LEV and ULEV vehicles can experience, on average, a 40% increase in NMHC and 134% increase in NO_x emissions when operated on 330 ppm sulfur fuel (approximately the current national average sulfur level) compared to 30 ppm sulfur fuel.

This level of emissions increase is significant enough on its own to potentially cause a vehicle to exceed the proposed full useful life emission standards when operated on sulfur levels that are substantially higher than the levels proposed today, even with the margin of safety that auto manufacturers generally include. Average sulfur levels in the U.S. are currently high enough to significantly impair the emissions control systems in new technology vehicles, and to potentially cause these vehicles to fail emission standards required for vehicles up through 100,000 miles (or more) of operation.

For older vehicles designed to meet Tier 0 and Tier 1 emission standards, the effect of sulfur contamination is somewhat less. Still, testing shows that gasoline sulfur increases emissions of NMHC and NO_x by almost 17% when one of these vehicles is operated on gasoline containing 330 ppm sulfur compared to operation on gasoline with 30 ppm sulfur. Thus, Tier 0 and Tier 1 vehicles can also have higher emissions when they are exposed to sulfur levels substantially higher than the proposed sulfur standard. This increase is generally not enough to cause a vehicle to exceed the full useful life emission standards in practice, but it can result in in-use emissions increases since the

vehicle could emit at levels higher than it would if it operated consistently on 30 ppm sulfur gasoline.

Gasoline sulfur control to 30 ppm would achieve about 700,000 tons of NO_x reductions per year from LDVs and LDTs by 2020. This represents about a third of the national NO_x emission reductions otherwise available from these vehicles. Without these potential emission reductions, many states would face the potentially unmeetable challenge of finding enough other cost-effective sources of NO_x emission reductions to address their ozone nonattainment and maintenance problems.

Other implications of continued use of high-sulfur gasoline include the following:

- Other important potential air quality benefits would not be realized throughout the country, including reduction in direct emissions of sulfur dioxide, secondary formation of nitrate PM from NO_x emissions, reductions in regional haze, reductions in air toxics emissions and other pollution problems described in Section III above.
- The immediate and very significant improvements that lower sulfur gasoline would bring in the emissions performance of vehicles already on the road would not occur.
- Advanced emission control technologies now being developed, all of which appear equally or even more sensitive to gasoline sulfur levels than current technologies, would not be available to the U.S. vehicle market (for example, very fuel efficient technologies like gasoline direct injection technology and fuel cells).
- Finally, any interference with onboard emission control system diagnostic (OBD) systems that high-sulfur gasoline causes would remain in the absence of a low-sulfur gasoline program.

3. A Comprehensive Vehicle/Fuel Approach Is Therefore Necessary

Based on this information, we have concluded that sulfur levels in gasoline must be reduced to enable these catalysts to operate properly and for the needed air quality benefits of this program to be achieved. In today's action, therefore, we are proposing a comprehensive, integrated program of stringent vehicle emission standards in combination with stringent gasoline sulfur standards. The proposal is carefully designed to address the need for refiners to make low-sulfur gasoline available at very nearly the same time as auto makers begin selling large numbers of Tier 2 vehicles. We have tried to take into account all potential areas of

interaction between the vehicle and gasoline sulfur parts of the proposal, and as a result we believe that the overall proposed program would achieve the expected environmental goals while minimizing the economic and administrative burdens on the affected industries. We encourage all commenters to consider and discuss the interrelationships among the elements of the program when they comment on individual provisions.

B. Our Proposed Program for Vehicles

We have held a series of meetings with the various stakeholders impacted by this action. We have seriously considered their input in developing our proposal and believe the program laid out below and the areas upon which we are seeking comment are responsive to their concerns. One part of this input was provided by a broad representation of the LDV/LDT manufacturing industry, represented by the Alliance of Automobile Manufacturers, and offered constructive recommendations on a number of elements of a vehicle emission control program. We have considered many of their ideas and issues in the design of the proposed program and we are seeking comment on a number of others. The "Alliance" proposal is documented in the docket in a letter to EPA dated March 26, 1999.

The next sections of the preamble describe our proposal in detail.

1. Overview of the Proposed Vehicle Program

The vehicle-related part of today's proposal covers a wide range of standards, concepts, and provisions that affect how vehicle manufacturers would develop, certify, produce, and market Tier 2 vehicles. This Overview subsection provides readers with a broad summary of the major vehicle-related aspects of the proposal. Readers for whom this Overview is sufficient may want to move on to the discussion of the key gasoline sulfur control provisions (Section IV.C.). Readers wishing a more detailed understanding of the proposed vehicle provisions can continue beyond the Overview to deeper discussions of key issues and provisions (Sections IV.B.-2, 3, and 4) as well as discussions of additional provisions (Section V.A.). Readers should refer to the regulatory language found at the end of this preamble for a complete compilation of the proposed requirements.

a. Introduction. Today's proposal for Tier 2 vehicle standards incorporates concepts from the federal NLEV program. The program takes the

corporate averaging concept and other provisions from NLEV but changes the focus from NMOG to NO_x. The emission standard "bins" used for this average calculation are different in several respects from those of the California LEV II program, yet we have designed them to allow harmonization of federal and California vehicle technology. As discussed below, the Tier 2 corporate average NO_x level to be met through these requirements ultimately applies to all of a manufacturer's LDVs and LDTs (subject to two different phase-in schedules) regardless of what fuel is used.

In the discussions below, we propose different Tier 2 phase-in schedules for two different groups of vehicles as well as two different sets of interim standards for 2004 and later model year vehicles not yet phased-in to the Tier 2 standards. To understand how the program would work, it is necessary first to understand EPA's classification system for light-duty vehicles and trucks.

The light duty category of motor vehicles includes all vehicles and trucks under 8500 pounds gross vehicle weight rating, or GVWR (i.e., vehicle weight plus rated cargo capacity). Table IV.B.-1 shows the various light duty categories. In the discussion below, we make frequent reference to two separate groups of light vehicles: (1) LDV/LLDTs, which include all LDVs and all LDT1s and LDT2s; and (2) HLDTs, which include LDT3s and LDT4s.

TABLE IV.B.-1.—Light Duty Vehicles and Trucks; Category Characteristics

	Characteristics
LDV	A passenger car or passenger car derivative seating 12 passengers or less.
Light LDT (LLDT).	Any LDT rated at up through 6,000 lbs GVWR. Includes LDT1 and LDT2.
Heavy LDT (HLD).	Any LDT rated at greater than 6,000 lbs GVWR, but not more than 8,500 lbs GVWR. Includes LDT3 and LDT4.

As discussed below, the Tier 2 program would take effect in 2004, with full phase in occurring by 2007 for LDV/LLDTs and 2009 for HLDTs. During the phase-in years of 2004–2008, vehicles not certified to Tier 2 requirements would meet interim requirements that would also employ a bins system, but with less stringent corporate average NO_x standards.

References to California LEV II Program

Throughout this preamble, we make reference to California's LEV II program

and its requirements. The LEV II program was approved by the California ARB at a hearing of November 5, 1998. Numerous draft documents were prepared by ARB staff in advance of that hearing and made available to the public. Some of those documents have now been modified as a result of changes to the proposed program made at the hearing and due to comments received after the hearing.

However, when this NPRM was assembled for signature, the documents related to the LEV II program had still not been finalized. In fact, a 15 day public review of the program was scheduled for April 15–30, 1999. After that review, ARB expected to be able to formally adopt the program and issue final documents without significant change.

We have placed copies of the latest available documents, some of which we used in the preparation of this NPRM, in the docket. You may also obtain these documents and other information about California's LEV II program from ARB's web site: (www.arb.ca.gov/regact/levii/levii.htm).

In the regulatory text that follows this preamble, we propose to incorporate by reference a number of documents related to LEVII and California test procedures under LEVII. ARB expects to finalize the LEV II program without significant changes before we issue a final rule. We will review any changes to the final version of the LEV II program and its supporting documents and consider them for inclusion in the federal program when we prepare our final rule.

b. *Corporate Average NO_x Standard.* The program we are proposing today would ultimately require each manufacturer's average NO_x emissions over all of its Tier 2 vehicles each model year to meet a NO_x standard of 0.07 g/mi. Manufacturers would have the flexibility to certify Tier 2 vehicles to different sets of exhaust standards that we refer to as "bins," but would have to choose the bins so that their corporate sales weighted average NO_x level for their Tier 2 vehicles was no more than the 0.07 g/mi. (We discuss the bins in the next subsection.)

The value of a corporate average standard is that the program's air quality goals would be met while allowing manufacturers the flexibility to certify some models above and some models below the standard. Each manufacturer would determine its year-end corporate average NO_x level by computing a sales-weighted average of the NO_x standards from the various bins to which it certified any Tier 2 vehicles. The manufacturer would be in compliance

with the standard if its corporate average NO_x emissions for its Tier 2 vehicles met the 0.07 g/mi level.

c. *Tier 2 Emission Standard "Bins".* We are proposing seven emission standard bins, each one a set of standards to which manufacturers could certify their vehicles. (Table IV.B.-2. in Section IV.B.-4.a. below shows all the standards associated with each bin.) Several bins have the same values as the California LEV II program. Further, we added three bins that are not a part of the California program to increase the flexibility of the program for manufacturers. As further discussed in Section IV.B.4. below, we believe these extra bins would help provide incentives for manufacturers to produce vehicles with emissions below 0.07 g/mi NO_x.

The corporate average concept using the seven bins would provide a program that gets the same emission reductions we would expect from a straight 0.07 g/mi standard for all vehicles because all NO_x emissions from Tier 2 vehicles in bins above 0.07 g/mi would need to be offset by NO_x emissions from Tier 2 vehicles in bins below 0.07 g/mi. This focus on NO_x allows NMOG emissions to "float" in that the fleet NMOG emission rate depends on the mix of bins used to meet the NO_x standard. However, you can see by examining the bins we are proposing, that any combination of vehicles meeting the 0.07 g/mi average NO_x standard would have average NMOG levels at or below 0.09 g/mi. In addition, there will be overall improvements in NMOG since Tier 2 incorporates HLDTs, which are not covered by the NLEV program.

d. *Schedules for Implementation.* We recognize that the Tier 2 standards pose greater technological challenges for larger light duty trucks than for LDVs and smaller trucks. We believe that additional leadtime is appropriate for HLDTs. HLDTs have historically been subject to the least stringent vehicle-based standards. Also, HLDTs were not subject to the voluntary emission reductions implemented for LDVs, LDT1s and LDT2s in the NLEV program. Consequently we have designed separate phase-in programs for the two groups. Our phase-in approach would provide HLDTs with extra time before they would need to begin phase-in to the Tier 2 standards and also provide two additional years for them to fully comply. Figure IV.B-1 provides a graphical representation of how the phase-in of the Tier 2 program would work for all vehicles. This figure shows several aspects of the proposed program:

- Phase-in/phase-out requirements of the interim programs;

- Phase-in requirements of new evaporative standards;
- Years that could be included in alternative phase-in schedules;
- Years in which manufacturers could bank NO_x credits through “early banking”; and
- “Boundaries” on averaging sets in the Tier 2 and interim programs.

We discuss each of these topics in detail below and make numerous references to Figure IV.B-1.

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Figure IV.B-1

TIER 2 AND INTERIM NON-TIER 2 PHASE-IN AND EXHAUST AVERAGING SETS
 (Bold lines around shaded areas indicate averaging sets)

	2001	2002	2003	2004	2005	2006	2007	2008	2009 + later %	NO _x STD. (g/mi)
				%	%	%	%	%		
LDV/LLDT (INTERIM)	NLEV	NLEV	NLEV	75 max	50 max	25 max				0.30 avg
LDV/LLDT (TIER 2 +evap)	<i>early banking</i> b b b			25	50	75	100	100	100	0.07 avg
HLDT (TIER 2 +evap)	b	b	b	<i>early banking</i> b b b b				50	100	0.07 avg
HLDT (INTERIM)	TIER 1 b	TIER 1 b	TIER 1 b	25	50	75	100	50 max		0.20^a avg

^a 0.60 NO_x cap applies to balance of vehicles during the 2004-2006 phase-in years

^b Alternative phase-in provisions permit manufacturers to deviate from the 25/50/75% 2004-2006 and 50% 2008 phase-in requirements and provide credit for phasing in some vehicles during one or more of these model years.

i. Implementation Schedule for LDVs and LLDTs

We are proposing that the Tier 2 standards take effect beginning with the 2004 model year for light duty vehicles and trucks at or below 6000 pounds GVWR (LDV/LLDTs). We are proposing that manufacturers would phase their vehicles into the Tier 2 program beginning with 25 percent of LDV/LLDT sales that year, 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. Manufacturers would be free to choose which vehicles were phased-in each year. However, in each year during (and after) the phase-in, the manufacturer's average NO_x for its Tier 2 vehicles would have to meet the 0.07 g/mi corporate average standard. This phase-in schedule would provide between five and eight years of leadtime for the manufacturers to bring all of their LDV/LLDT production into compliance. These vehicles constitute nearly 90 percent of the light duty fleet.

To increase manufacturer flexibility and provide incentives for early introduction of Tier 2 vehicles, we are proposing that manufacturers could use alternative phase-in schedules that would require 100 percent phase-in by 2007, but would recognize the benefits of early introduction of Tier 2 vehicles, and allow manufacturers to adjust their phase-in to better fit their own production plans.

ii. Implementation Schedule for HLDTs

To provide greater leadtime for HLDTs we are proposing that the Tier 2 phase-in schedule would start later and end later than that for LDVs and LLDTs. In our proposal 50 percent of each manufacturer's HLDTs would be required to meet Tier 2 standards in 2008, and 100 percent would have to meet Tier 2 standards in 2009. As with the LDV/LLDTs, the Tier 2 HLDTs would have to meet a corporate average NO_x standard of 0.07 g/mi. This delayed phase-in schedule would provide manufacturers with nine years of lead time before they would need to bring any HLDTs into compliance with Tier 2 standards. As for the LDV/LLDTs above, to encourage early introduction of Tier 2 HLDTs and to provide manufacturers with greater flexibility, we are proposing that manufacturers could use alternative phase-in schedules that would still result in 100% phase-in by 2009.

We request comment on the appropriateness of this separate schedule for HLDTs.

e. LDVs and LDTs Not Covered by Tier 2. The two groups of vehicles (LDV/LLDTs and HLDTs) will be approaching

the Tier 2 standards from quite different emission "backgrounds." LDV/LLDTs will be at NLEV levels, which require NO_x emissions of either 0.3 or 0.5 g/mi on average³³, while HLDTs will be at Tier 1 levels facing NO_x standards of either 0.98 or 1.53 g/mi, depending on truck size. These Tier 1 NO_x levels for HLDTs are very high relative to our 0.07 g/mi Tier 2 NO_x average. To address the disparity in emission "backgrounds" while gaining air quality benefits from vehicles during the phase-in period, we are proposing separate sets of interim standards for the two vehicle groups during the phase-in period. The provisions described below would apply in 2004 for all LDVs and LDTs not certified to Tier 2 standards. The relationship of the interim programs to the final Tier 2 standards is shown in Figure IV.B-1.

i. Interim Standards for LDV/LLDTs

Beginning with the 2004 model year, all new LDVs and LLDTs not incorporated under the Tier 2 phase-in would be subject to an interim corporate average NO_x standard of 0.30 g/mi. This is the nominal LEV NO_x emission standard for LDVs and LDT1s under the NLEV program. This interim program would hold LDVs and LLDTs not covered by the Tier 2 standards during the phase-in to NLEV levels and bring about NO_x emission reductions from LDT2s. By implementing these interim standards for LDVs and LLDTs we will ensure that the accomplishments of the NLEV programs are continued. Because the Tier 2 standards are phased-in beginning in the 2004 model year, the interim standards for LDVs and LLDTs apply to fewer vehicles each year, i.e., they are "phase-out" standards. Figure IV.B-1 shows the maximum percentage of LDVs and LLDTs that would normally be subject to the interim standards each year.

As the interim program for LDV/LLDTs is designed to hold these vehicles to NLEV levels, it employs bins derived from the NLEV program. These bins are shown in Tables IV.B.-6 and -7.

ii. Interim Standards for HLDTs.

Our interim standards for HLDTs would begin in 2004. The Interim Program for HLDTs would set a corporate average NO_x standard of 0.20 g/mi that would be phased in between 2004 and 2007. The interim HLDT standards, like those for LDV/LLDTs

would be built around a set of bins (See Tables IV.B.-8 and -9).

As shown in Figure IV.B.-1, the phase-in would be 25 percent in the 2004 model year, 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. The program would remain in effect through 2008 to cover those HLDTs not yet phased into the Tier 2 standards (a maximum of 50%). Vehicles not subject to the interim corporate average NO_x standard during the 2004-2006 phase-in years would be subject to the least stringent bin (Bin 5) so their NO_x emissions would be effectively capped at 0.60 g/mi. These vehicles would be excluded from the calculation to determine compliance with the interim 0.20 g/mi average NO_x standard.

This proposed approach would implement standards significantly lower than the Tier 1 NO_x standards currently applicable to these vehicles. While manufacturers already certify many HLDTs at or below these levels, we believe these interim standards represent a reasonable step toward the Tier 2 standards and would provide meaningful control in the near term relative to current levels and Tier 1. This approach would allow more time for manufacturers to bring the more difficult HLDTs to Tier 2 levels while achieving real reductions from those HLDTs that may present less of a challenge.

iii. Interim Programs Would Provide Reductions over Previous Standards

As was the case with the primary Tier 2 bin structure, the bin structure for the interim programs would focus on NO_x and yet should provide further reductions in NMOG beyond the NLEV program (See Tables IV.B.-6, 7, 8 and 9). This is because the interim programs would reduce emissions from LDT2s and HLDTs compared to their previous standards. Without the interim standards, HLDTs could be certified as high as 0.46 g/mi or 0.56 g/mi, the Tier 1 NMHC levels. With the interim standards, however, exhaust NMOG should average approximately 0.09 g/mi for all non-Tier 2 LDV/LLDTs. and 0.25 g/mi or less for HLDTs.

iv. Alternative Approach for Interim Standards

An alternative flexible approach for reducing the emissions from vehicles and trucks prior to their phase-in to Tier 2 standards would be to employ a declining NO_x average, or perhaps separate declining NO_x averages for LDV/LLDTs and HLDTs. In this approach, manufacturers would certify vehicles to their choice of bins, but

³³ The NLEV program imposes NMOG average standards that would lead to full useful life NO_x levels of about 0.3 g/mi for LDV/LDT1s and 0.5 g/mi for LDT2s.

would have to meet an average NO_x standard (or standards) that became lower each year. Manufacturers could bank NO_x credits in early years of such a program for use in later years when the standard tightened. We request comment on the benefits, implications and drawbacks of such an approach. Commenters should address the issues of (1) what added flexibility does this approach provide beyond that provided by the bins and phase-in approach proposed above, (2) how to handle potential windfall credits that could arise in the early years under such an approach, (3) how a standard that changes each year would impact technology phase-in and phase-out, and (4) whether such an approach would require the implementation of declining average standards for the other exhaust pollutants.

f. *Generating, Banking, and Trading NO_x Credits.* As described above, we are proposing that manufacturers average the NO_x emissions of their Tier 2 vehicles and comply with a corporate average NO_x standard. In addition, we are proposing that when a manufacturer's average NO_x emissions fall below the corporate average NO_x standard, it could generate NO_x credits that it could save for later use (banking) or sell to another manufacturer (trading). NO_x credits would be available under the Tier 2 standards, the interim standards for LDVs and LLDTs, and the interim standards for HLDTs. These NO_x credit provisions would facilitate compliance with the fleet average NO_x standards and would be very similar to those currently in place for NMOG emissions under California and federal NLEV regulations.

A manufacturer with an average NO_x level for its Tier 2 vehicles in a given model year below the 0.07 gram per mile corporate average standard would generate Tier 2 NO_x credits that it could use in a future model year when its average NO_x might exceed the 0.07 standard. Manufacturers would calculate their corporate average NO_x emissions and then compute credits based on how far below 0.07 g/mi the corporate average fell.

Manufacturers would be free to retain any credits they generate for future use or to trade (sell) those credits to other manufacturers. Credits retained or purchased could be used by manufacturers with corporate average Tier 2 NO_x levels above 0.07 g/mi. Manufacturers could certify LDVs and LLDTs to Tier 2 standards as early as the 2001 model year and receive NO_x credits for their efforts. They could use credits generated under these "early banking" provisions after the Tier 2

phase-in begins in 2004 (2008 for HLDTs).

Banking and trading of NO_x credits under the interim non-Tier 2 standards would be similar, except that a manufacturer would determine its credits based upon the 0.30 or 0.20 gram per mile corporate average NO_x standard applicable to vehicles in the interim programs. There would be no provisions for early banking under the interim standards and manufacturers would not be allowed to use interim credits to address the Tier 2 NO_x average standard. Interim credits from LDVs/LLDTs and interim credits from HLDTs could not be used interchangeably due to the differences in the interim corporate average NO_x standards. We seek comment on allowing exchanges of credits between the LDV/LLDT interim program and the HLDT interim program.

Banking and trading of NO_x credits and related issues are discussed in greater detail in Section IV.B.-4.d. below.

2. Why Are We Proposing the Same Set of Standards for Tier 2 LDVs and LDTs?

Before we provide a more detailed description of the proposed vehicle program, two overarching principles of today's proposal are worth explaining in some detail. The first of these is our proposal to bring all LDVs and LDTs under the same set of emission standards. Historically, LDTs—and especially the heavier trucks in the LDT3 and LDT4 categories—have been subject to less stringent emission standards than LDVs (passenger cars). In recent years the proportion of light truck sales has grown to approximately 50 percent. Many of these LDTs are minivans, passenger vans, sport utility vehicles and pick-up trucks that are used primarily or solely for personal transportation; i.e., they are used like passenger cars and there are more annual vehicle miles of travel as a result.

As vehicle preferences have increasingly shifted from passenger cars to light trucks there has been an accompanying increase in emissions over what otherwise would have occurred, because of the increase in miles traveled and the less stringent standards for LDTs as compared to LDVs. As Section III. above makes clear, reductions in these excess emissions (and in other mobile and stationary source emissions) are seriously needed. Since both LDVs and LDTs are within technological reach of the standards in the proposed Tier 2 bin structure, we are proposing to equalize the regulatory useful life periods for LDVs and LDTs

and to apply the same Tier 2 exhaust emission standard bins to all of them.

Once the phase in periods end for all vehicles in 2009, manufacturers would include all LDVs and LDTs together in calculating their corporate average NO_x levels.³⁴ As mentioned above and described in more detail in Section IV.B.-4. below, manufacturers could choose the emission bin for any test group of vehicles provided that on a sales weighted average basis, the manufacturer met the average NO_x standard of 0.07 g/mi for its Tier 2 vehicles that year.

Some have suggested that a program with different requirements would be needed for heavy LDTs. Recognizing that compliance will be most challenging for HLDTs, the delay in the start of the phase-in and the additional phase-in years for those vehicles would allow manufacturers to delay the initial impact of the Tier 2 standards until the 2008 model year. This represents four additional model years of leadtime beyond the time when passenger cars and LDT1s and LDT2s would have achieved Tier 2 standards in substantial numbers. We believe this phase-in and other provisions of this proposal respond to these concerns. However, we request comments on the need for different standards for these vehicles. Specifically, we request comment on different levels for NMOG standards for these vehicles, including how NMOG standards less stringent than our proposed standards might affect the technological challenges presented by the proposed NO_x standards.

Considerations for a 2004 Technology Review

EPA is seeking comment on whether it should conduct a technology review of the Tier 2 standards in the future. As part of the input received from stakeholders while developing this proposal, the Alliance of Automobile Manufacturers suggested that the proposal include consideration of a technology review, principally designed to assess the status of Tier 2 technology development. As discussed above, we recognize that HLDTs will face the greatest technological challenge in complying with our proposed standards. Some manufacturers have suggested that the approach of applying the same standard to cars and light-duty trucks presents sufficient challenge as to raise serious uncertainty about compliance for the larger vehicles, even in the 2008

³⁴ Because of the different phase-in percentages and phase in schedules for the two groups, we are proposing that during the duration of the phase-in (through 2008) manufacturers would average Tier 2 LDV/LLDTs separately from HLDTs.

time frame. In addition to the concerns expressed regarding the time frame for implementation of the more stringent standards for HLDTs in 2008, manufacturers have indicated that there are questions of feasibility for introduction of advanced technologies for improved fuel economy, such as lean burn, fuel cell, and hybrid electric technology.

The review could assess the feasibility of the standards relative to the state of technology development for HLDTs. Further, the review could consider gasoline and diesel fuel quality and its impact on the effectiveness of aftertreatment, and whether lower sulfur levels are necessary for HLDTs to meet the Tier 2 standards. We may also examine the feasibility of the standards for vehicles using technologies to advance fuel economy. In addition, the review could consider whether additional air quality improvements are necessary and the feasibility of additional reductions of vehicle emissions to achieve such air quality improvements. EPA believes that serious consideration of this concept is warranted and if it determines such a review to be appropriate, the best time to conduct such a review may be in the 2004 time frame, before the final Tier 2 standards go into effect for HLDTs.

EPA could conduct such a review to assess the feasibility, timing and stringency of the standards relative to the state of technology development. In doing so, EPA would determine whether or not there was a need to formally consider a change in the final Tier 2 standards. If such a change were determined to be necessary, EPA would conduct a formal rulemaking, including conducting public hearings.

As part of the technology review, EPA would seek advice from all appropriate stakeholders and could engage a peer review process. In addition, such a process, if undertaken, could include public notice and opportunity for comment on the review, including the holding of public hearings by EPA. One way to structure the process would include the establishment of an advisory panel under the Clean Air Act Advisory Committee to provide assessment of the state of technology and the feasibility of the standards. The Committee could recommend appropriate action for the

Administrator based on their findings. The Administrator would then determine if any changes were needed to adjust the Tier 2 standards for HLDTs, advanced technologies, or the fuel parameters. We request comment on the need for a technology review, scope of the review and on the design of the process and its timing.

3. Why Are We Proposing the Same Standards for Both Gasoline and Diesel Vehicles?

The second overarching principle of our vehicle proposal is to apply the same Tier 2 standards to all light vehicles, regardless of the fuel they are designed to use. The same exhaust emission standards and useful life periods we are proposing today would apply whether the vehicle is built to operate on gasoline or diesel fuel or on an alternative fuel such as methanol or natural gas. Diesel engines used in LDVs and LDTs tend to be used in the same applications as their gasoline counterparts, and thus we believe they should meet the same or very similar standards.

Manufacturers have expressed concerns that diesel-fueled vehicles would have difficulty meeting NO_x and particulate matter levels like those contained in today's proposal. Clearly, these standards would be challenging. As discussed in Section IV.A.-1. above, we expect that the proposed Tier 2 NO_x and NMOG standards would be challenging for gasoline vehicles, but that major technological innovations would not be required. For diesels, however, the proposed NO_x and PM standards would likely require applications of new types of aftertreatment with, perhaps, changes in diesel fuel. We anticipate that manufacturers that chose to build diesel vehicles would adopt aftertreatment technologies such as NO_x storage catalysts and continuously regenerating particulate traps to meet Tier 2 requirements.

Today, diesels comprise less than one-half of one percent of all LDV/LDT sales. While this is a small fraction, the potential exists for diesels to gain a considerable market share in the future. All one need do is review the dramatic increase in recent years of diesel engine use in the lightest category of heavy

duty vehicles (8500–10,000 pounds GVWR) to see the potential for significant diesel engine use in LDTs, and perhaps LDVs, in the future. Just ten ago years diesels made up less than 10 percent of this class of vehicles. In 1998, this fraction approached 50 percent.

The potential impact of large-scale diesel use in the light-duty fleet underscores the need for the same standards to apply to diesels as for other vehicles. Given the health concerns associated with diesel PM emissions (see Section III. above), we believe that it is prudent to address PM emissions from diesel LDVs and LDTs while their numbers are relatively small. In this way the program can minimize the PM impact that would accompany significant growth in this market segment while allowing manufacturers to incorporate low-emission technology into new light-duty diesel engine designs.

4. Key Elements of the Proposed Vehicle Program

The previous subsections IV.B.-1., 2., and 3. provided an overview of today's proposed vehicle program and the two overarching principles that it is built on. This subsection elaborates on the major vehicle-related elements of today's proposal. Later in this preamble, Section V.A. discusses the rest of the proposed vehicle provisions.

a. *Basic Exhaust Emission Standards and "Bin" Structure.* The program we are proposing today contains a basic requirement that each manufacturer meet, on average, a full useful life NO_x standard of 0.07 g/mi for all its Tier 2 LDVs and LDTs. Manufacturers would have the flexibility to choose the set of standards that a particular test group³⁵ of vehicles must meet. For a given test group of LDVs or LDTs, manufacturers would select a set of full useful life³⁶ standards from the same row ("emission bin" or simply "bin") in Table IV.B.-1. below. Each bin contains a set of individual NMOG, CO, HCHO, NO_x, and PM standards. The vehicles would have to comply with each of those standards and would also be subject to the corresponding bin of intermediate useful life standards, if applicable, found in Table IV.B.-2. For technology harmonization purposes, our proposed

³⁵ A "test group" is the basic classification unit proposed for certification of light-duty vehicles and trucks under EPA certification procedures for the CAP2000 program. This preamble assumes that manufacturers will be certifying under the provisions of the CAP2000 program. "Test group" is a broader classification unit than "engine family" used prior to the implementation of the CAP2000

program. We discuss the CAP2000 program in more detail in section V.A.9. of this preamble.

³⁶ The regulatory "useful life" value for Tier 2 vehicles is specifically addressed in Section V.A.2. of this preamble. Full useful life is proposed to be 10 years or 120,000 miles for all vehicles except LDT3s and LDT4s, for which it is 11 years or 120,000 miles. Intermediate useful life, where standards are applicable, is 5 years or 50,000 miles.

³⁷ EPA's current standards for Clean Fuel Vehicles are less stringent than the proposed Tier 2 standards. See 40 CFR 88.104–94. The Tier 2 standards would supercede the current CFV standards, and, if EPA adopts the standards proposed today, the Agency intends to undertake a rulemaking to revise the CFV standards accordingly.

emission bins include all of those adopted in California's LEV II program.³⁷

adopted in California's LEV II program.³⁷

TABLE IV.B.-2.—TIER 2 LIGHT-DUTY FULL USEFUL LIFE (120,000 MILE) EXHAUST EMISSION STANDARDS
[Grams per mile]

Bin No.	NO _x	NMOG	CO	HCHO	PM
7	0.20	0.125	4.2	0.018	0.02
6	0.15	0.090	4.2	0.018	0.02
5	0.07	0.090	4.2	0.018	0.01
4	0.07	0.055	2.1	0.011	0.01
3	0.04	0.070	2.1	0.011	0.01
2	0.02	0.010	2.1	0.004	0.01
1	0.00	0.000	0.0	0.000	0.00

TABLE IV.B.-3.—LIGHT-DUTY INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST EMISSION STANDARDS
[Grams per mile]

Bin No.	NO _x	NMOG	CO	HCHO	PM
7	0.14	0.100	3.4	0.015	.....
6	0.11	0.075	3.4	0.015	.....
5	0.05	0.075	3.4	0.015	.....
4	0.05	0.040	1.7	0.008	.....

Under a "bins" approach, a manufacturer may select a set of emission standards (a bin) to comply with, and a test group must meet all standards within that bin. Ultimately, the manufacturer must also ensure that the emissions of a targeted pollutant—NO_x in this case—from all of its vehicles taken together meet a "corporate average" emission standard. This corporate average emission standard ensures that a manufacturer's production yields the required overall emission reductions. (See Section IV.B.-4.c. below for more discussion of the corporate average NO_x standard.)

In addition to the Tier 2 standards described above, we are also proposing interim standards derived from the LDV/LDT1 NLEV standards to cover all non-Tier 2 LDVs and LLDTs during the Tier 2 phase-in. We are proposing separate interim standards for HLDTs. (We describe the interim standards in detail in Section IV.B.4.e. below.)

i. Why Are We Proposing Extra Bins?

Compared to the CalLEV II program, our Tier 2 proposal includes additional bins. The California program contains no bins that would allow NO_x levels above the 0.07 g/mi level of LEVs. Therefore, under the California program, no engine family can be certified above LEV levels, even with the application of offsetting credits. We propose to add two bins above the LEV bin (Bins 6 and

7) and another below the LEV bin (Bin 3) to provide manufacturers with additional flexibility to reduce costs and to account for greater technological challenges faced in getting certain vehicles to levels of 0.07 g/mi NO_x or less.

During the Tier 2 phase-in years (through 2006 for LDV/LLDTs and 2008 for HLDTs), we are also proposing that the bins from the applicable interim program would be available. Vehicles certified to these levels could, at the manufacturer's option, be included in calculating the Tier 2 corporate average NO_x level. This would enhance the flexibility of the program by providing manufacturers with three additional bins having NO_x standards above 0.07 g/mi. Since a manufacturer could elect these bins under the interim program anyway, there would be no impact on air quality. The interim program and the interim bins for non-Tier 2 vehicles are described in detail in section IV.B.4.e.

The additional bins would also provide an incentive for manufacturers to produce vehicles below 0.07 g/mi of NO_x. We believe this incentive would exist because manufacturers would have some vehicles (especially larger LDTs) that they might find more cost effective to certify to levels above the 0.07 g/mi average standard. However, to do this they would have to offset those vehicles in our NO_x averaging system with

vehicles certified below 0.07 g/mi, and the 0.04 g/mi bin would provide greater opportunity to do this. Thus, the extra bins would serve two purposes; they would provide additional flexibility to manufacturers to address technological differences and costs, and they would provide those manufacturers with incentives to produce cleaner vehicles and thus advance emission control technology.

We are proposing a bins approach and the proposed bins because we believe they would provide adequate and appropriate emission reductions and manufacturer flexibility. In addition, this structure will help to accelerate technological innovation. We request comment on the appropriateness of the proposed bin structure and whether the levels proposed are appropriate. Also, we request comment on whether we should include up to two additional bins between bin 5 (NO_x = 0.07) and bin 6 (NO_x = 0.15). Our proposed bin structure is intended to assure that nearly all vehicles comply with a NO_x standard of 0.07 g/mi. These additional bins would provide greater flexibility for manufacturers who may find it more cost-effective to produce some vehicles slightly above 0.07 but would have difficulties meeting a 0.07 g/mi average NO_x standard if they had to certify them to a NO_x level of 0.15 g/mi. We request specific comment on whether we should

³⁵ A "test group" is the basic classification unit proposed for certification of light-duty vehicles and trucks under EPA certification procedures for the CAP2000 program. This preamble assumes that

manufacturers will be certifying under the provisions of the CAP2000 program. "Test group" is a broader classification unit than "engine family" used prior to the implementation of the CAP2000

program. We discuss the CAP2000 program in more detail in section V.A.9. of this preamble.

establish these bins and if so what standards for each pollutant we should include. As we indicated above, we believe that the existence of bins above 0.07 g/mi NO_x provide an incentive for technological advancement. We request comment as to whether these additional bins would limit this incentive in any way.

On the other hand, Bin 7 is intended primarily to aid manufacturers during the transition to Tier 2 standards. We request comment on whether this bin should be eliminated when the Tier 2 phase-in is completed (after 2007 for LDV/LLDTs and after 2009 for HLDTs).

b. The Proposed Program Would Phase in the Tier 2 Vehicle Standards over Several Years

i. Primary Phase-In Schedule

We are proposing to phase in the Tier 2 standards for LDVs/LLDTs over a four year period beginning in 2004 and we are proposing a delayed two year phase-in beginning in 2008 for HLDTs. These phase-in schedules are shown in Tables IV.B.-2 and are also shown separately in Tables IV.B.-4 and 5. We believe the flexibility of this dual phase-in approach is appropriate because the proposed Tier 2 program would encompass all light-duty vehicles and trucks and would result in widespread applications of upgraded and improved technology across the fleet. The program would require research, development, proveout, and certification of all light-duty models, and manufacturers would need longer lead time for some vehicles, especially HLDTs. Also, manufacturers might wish to time compliance with the Tier 2 standards to coincide with other changes such as the roll out of new engines or new models. In order to begin the introduction of very clean vehicles as soon as possible while avoiding imposing unnecessary inefficiencies on vehicle manufacturers, we believe a practical but aggressive phase-in schedule like the one we are proposing effectively balances air quality, technology, and cost considerations.

In each year, manufacturers would have to ensure that the specified fraction of their U.S. sales³⁸ met Tier 2 standards for evaporative emissions (discussed in Section IV.B.-4.f. below) and exhaust emissions, including Supplemental Federal Test Procedure (SFTP) standards (discussed in Section

V.A.-3. below), as well as the corporate average Tier 2 NO_x standard. Manufacturers would have to meet the Tier 2 exhaust requirements (i.e., all the standards of a particular bin plus the SFTP standards) using the same vehicles. Vehicles not covered by the Tier 2 standards during the phase-in years (2004–2008) would have to meet interim standards described in Section IV.B.-4.e. below and the existing evaporative emission as well as the applicable SFTP standards.

Manufacturers could elect to meet the percentage phase-in requirements for evaporative and exhaust emissions using two different sets of vehicles. We believe that because of interactions between evaporative and exhaust control strategies, manufacturers would generally address the Tier 2 evaporative phase-in with the same vehicles that they used to meet the exhaust phase-in. However, the primary focus of today's proposal is on exhaust emissions, and the flexibility for manufacturers to use different sets of vehicles in complying with the phase-in schedule for evaporative standards and for the exhaust standards would have no environmental down side that we are aware of. It is possible that some exhaust emission improvements might even occur sooner than they otherwise would if a manufacturer were able to move ahead with the roll-out of a model with cleaner exhaust emissions without having to wait for the development of suitable evaporative controls to be completed for that model.

TABLE IV.B.-4.—PRIMARY PHASE-IN SCHEDULE FOR SALES OF TIER 2 LDVS AND LLDTs

Model year	Required percentage of light-duty vehicles and light-duty trucks
2004	25
2005	50
2006	75
2007	100

TABLE IV.B.-5.—PRIMARY PHASE-IN SCHEDULE FOR SALES OF TIER 2 HLDTs

Model year	Required percentage of heavy light-duty trucks
2008	50
2009	100

According to the proposed phase-in approach, vehicle sales would be determined according to the "point of first sale" method outlined in the NLEV rule. Vehicles with points of first sale in California or a state that had adopted the California LEV II program would be excluded from the calculation. The "point of first sale" method recognizes that most vehicle sales will be to dealers and that the dealers' sales will generally be to customers in the same geographic area. While some sales to California residents (or residents of states that adopt California standards) may occur from other states and vice-versa, we believe these sales will be far too small to have any significant impact on the air quality benefits of the Tier 2 program.

ii. Alternative Phase-In Schedule

While our primary proposal is based upon a phase-in of 25%, 50%, 75% and 100% of sales over the 2004, 2005, 2006 and 2007 model years, respectively (or 50% and 100% in 2008 and 2009 for HLDTs), we are proposing to permit alternative phase-in schedules as an option to provide additional flexibility to manufacturers. The alternative phase-in schedule provisions are structured to provide incentive to manufacturers to introduce Tier 2 vehicles before 2004 (or 2008 for HLDTs).

Under this alternative, manufacturers that introduced vehicles earlier than required could earn the flexibility to make offsetting adjustments, on a one-for-one basis, to the phase-in percentages in later years. However, they would still need to reach 100% of sales in the 2007 model year (2009 for HLDTs). Manufacturers would have the option to use this alternative to meet phase-in requirements for LDV/LLDTs and/or HLDTs. They could use separate alternative phase-in schedules for exhaust and evaporative emissions, or an alternative phase-in schedule for one set of standards and the primary (25/50/75/100%) schedule for the other.

An alternative phase-in schedule would be acceptable if it passed a specific mathematical test. We have designed the test to provide manufacturers benefit from certifying to the Tier 2 standards early while ensuring that significant numbers of Tier 2 vehicles would be introduced during each year of the alternative phase-in schedule. To test an alternative schedule, a manufacturer would sum its yearly percentages of Tier 2 vehicles beginning with model year 2001 and compare the resulting sum to the sum that results from the primary phase-in schedule. If an alternative schedule scored as high or higher than the base

³⁸The regulatory "useful life" value for Tier 2 vehicles is specifically addressed in Section V.A.2. of this preamble. Full useful life is proposed to be 10 years or 120,000 miles for all vehicles except LDT3s and LDT4s, for which it is 11 years or 120,000 miles. Intermediate useful life, where standards are applicable, is 5 years or 50,000 miles.

option, then the alternative schedule would be acceptable.

For LDV/LLDTs, the final sum of percentages would have to equal or exceed 250—the sum that results from a 25/50/75/100 percent phase-in. For example, a 10/25/50/65/100 percent phase-in that began in 2003 would have a sum of 250 percent and would be acceptable. In this example, each Tier 2 vehicle sold early (i.e. in 2003) would permit the manufacturer to sell one less Tier 2 vehicle in the last phase-in year (2006). A 10/20/40/70/100 percent phase-in that began the same year would have a sum of 240 percent and would not be acceptable. For HLDTs, the sum would have to equal or exceed 150 percent.

To ensure that significant numbers of Tier 2 vehicles are introduced in the 2004 time frame, manufacturers would not be permitted to use alternative phase-in schedules that delayed the implementation of the Tier 2 LDV/LLDT requirements, even if the sum of the phase-in percentages met or exceeded 250. Such a situation could occur if a manufacturer delayed implementation of its Tier 2 production until 2005 and began a 75/85/100 percent phase-in that year. To protect against this possibility, we are proposing that in any alternate phase-in schedule, a manufacturer's phase-in percentages from the 2004 and earlier model years sum to at least 25%.

The mathematical technique to evaluate alternative phase-in schemes is somewhat similar to that used in our NLEV rule and in California rules. We request comment on its appropriateness for this application. We also request comment on other approaches that might serve to provide incentive to manufacturers to introduce Tier 2 vehicles early, and to provide additional flexibility, while at the same time assuring that environmental gains equivalent to or greater than those of the primary phase-in option are produced. We have considered whether it would be appropriate to provide a "multiplier" that would serve to increase the value of the percentage of vehicles introduced before 2004 (2008 for HLDTs) in the mathematical test described above. Such a multiplier might start at 1 for 2004–2007 vehicles and increase for each year prior to 2004 (2008 for HLDTs). We request comment as to whether such a multiplier would be appropriate and whether it would produce real environmental gains by speeding the introduction of Tier 2 vehicles into the fleet.

All of the discussion on alternative phase-in schedules to this point has been premised on 100% compliance in 2007 (2009 for HLDTs). We request

comment as to whether alternative phase-in schedules should be structured in such a way that, if a manufacturer introduced Tier 2 vehicles in excess of the minimum required during the phase-in years, that manufacturer could extend its phase-in beyond 2007 or 2009. Commenters should address the time period beyond 2007 or 2009 that would be appropriate as well as how EPA would determine the fraction of vehicles that could be delayed until that time.

Phase-in schedules, in general, add little flexibility for manufacturers with limited product offerings. A manufacturer with only one or two test groups can not take full advantage of a 25/50/75/100 percent or similar phase-in. However for manufacturers that meet EPA's definition of "small volume manufacturer," we are proposing elsewhere in this preamble that those manufacturers be exempt from the phase-in schedules and would simply have to comply with the final 100% compliance requirement. Still, we request comment on how alternative phase-in schedules might be structured to provide flexibility and incentive for early introduction to smaller manufacturers.

Later in this preamble (in Section V) we request specific comment on whether we should include a scheme to provide extra NO_x credits for manufacturers that introduce Tier 2 vehicles early. Commenters to the above discussion on alternate phase-in schedules should address whether a provision for extra NO_x credits might be a more appropriate way to provide inducements to smaller manufacturers to introduce Tier 2 vehicles early. Commenters should consider the interactions such extra credits might have with alternate phase-in schedules, particularly in situations where a "multiplier," as described above, might be applied.

c. Manufacturers Would Meet a "Corporate Average" NO_x Standard. While the manufacturer would be free to certify a test group to any bin of standards in Table IV.B.–2, it would have to ensure that the sales-weighted average of NO_x standards from all of its test groups of Tier 2 vehicles met a full useful life standard of 0.07 g/mi. Using a calculation similar to that for the NMOG corporate average standard in the California and NLEV programs, manufacturers would determine their compliance with the corporate average NO_x standard at the end of the model year by computing a sales weighted average of the full useful life NO_x standards from each bin. Manufacturers would use the following formula:

$$\text{Corporate Average NO}_x = \Sigma(\text{Tier 2 NO}_x \text{ std for each bin}) \times (\text{sales for each bin}) / \text{total Tier 2 sales}$$

Manufacturers would exclude vehicles sold in California or states adopting California LEV II standards from the calculation. As indicated above, manufacturers would compute separate NO_x averages for LDV/LLDTs and HLDTs through the year 2008.

The corporate average NO_x standards of the primary Tier 2 program and the interim programs for LDVs/LLDTs and HLDTs would ensure that expected fleet-wide emission reductions are achieved. At the same time, the corporate average standards allow us to permit the sale of some vehicles above the levels of the average standards to address the greater technological challenges some vehicles face and to reduce the overall costs of the program. We discuss how manufacturers could generate, use, and buy or sell NO_x credits under the proposed program in the next subsection.

Given the corporate average NO_x standards, we do not believe a corporate average NMOG standard as used by California is essential because meeting the corporate average NO_x standard would automatically bring the NMOG fleet average to approximately LEV levels. However, we request comment on the need for such a corporate average NMOG standard, as well as suggestions and rationales for what that standard, if any, should be. Commenters are encouraged to address any interactions with the bin structure, if appropriate.

d. Manufacturers Could Generate, Bank, and Trade NO_x Credits.

i. General Provisions

As mentioned in the Overview above, we are proposing that manufacturers with year-end corporate average NO_x emissions for their Tier 2 vehicles below 0.07 g/mi could generate Tier 2 NO_x credits. Credits could be saved (banked) for use in a future model year or for trading (sale) to another manufacturer. Manufacturers would consume credits if their corporate average NO_x emissions were above 0.07 g/mi.

We are proposing the Tier 2 standards to apply regardless of the fuel the vehicle is designed for, and there would be no restrictions on averaging, banking or trading of credits across vehicles of different fuel types. Consequently, a gasoline fueled LDV might help a manufacturer generate NO_x credits in one year that could be banked for the next year when they could be used to average against NO_x emissions of a diesel fueled LDT.

Because of the split phase-in and the different interim programs we are

proposing for the two different groups of vehicles (LDV/LLDTs and HLDTs), we are also proposing to require that manufacturers compute their corporate Tier 2 NO_x averages separately for LDV/LLDTs and HLDTs through 2008. Credit exchanges between LDVs/LLDTs and HLDTs would not be allowed nor would credit exchanges across the interim program and Tier 2 program be allowed. These restrictions would end with the 2009 model year at which time both phase-ins and all interim standards will have ended and the program would permit free averaging across all Tier 2 vehicles. In the context of the whole program we are proposing, we are concerned that allowing cross-trading between interim and Tier 2 vehicles would reduce the expected benefits of the program and delay fleet turnover to Tier 2 emission levels. For this reason we are not proposing to allow such exchanges. We seek comment on this issue.

ii. Averaging, Banking, and Trading of NO_x Credits Would Fulfill Several Goals

There are several reasons why we believe the proposed provisions for averaging, banking, and trading of NO_x credits (ABT) would be valuable.

- ABT allows us to consider a more stringent emission standard than might otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard.

- ABT enhances the technological feasibility and cost effectiveness of the proposed standard, helping to ensure that the standard would be attainable earlier than would otherwise be possible.

- ABT would provide manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines meeting the new standard.

- ABT would create an incentive for early introduction of new technology, allowing certain engine families to act as trail blazers for new technology. This could help provide valuable information to manufacturers on the technology prior to manufacturers needing to apply the technology throughout their product line. The early introduction of new technology would also further improve the feasibility of achieving the standard and could also provide valuable information for use in other regulatory programs that may benefit from similar technologies (e.g., heavy-duty vehicle standards).

EPA views the proposed ABT provisions as environmentally neutral because the use of credits by some vehicles would be offset by the

generation of an equal number of credits generated by other vehicles. However, when coupled with the new standards, ABT could have environmental benefits because it could allow the new standards to be implemented earlier than would otherwise be appropriate under the Act.

iii. How Manufacturers Would Generate and Use NO_x Credits

As described in the previous subsection, and subject to the phase-in restrictions described in that subsection, manufacturers would determine their year-end corporate average NO_x emission level by computing a sales-weighted average of the NO_x standard from each bin to which the manufacturer certified any LDVs or LDTs. The manufacturer would round this average to one more decimal place than in the corporate average NO_x standard. Tier 2 NO_x credits would be generated when a manufacturer's average was below the 0.07 gram per mile corporate average NO_x standard, according to this formula:

$$\text{NO}_x \text{ Credits} = (0.07 \text{ g/mi} - \text{Corporate Average NO}_x) \times \text{Sales}$$

The manufacturer could then use these NO_x credits in future years when its corporate NO_x average was above 0.07, or it could trade (sell) the credits to other manufacturers. The use of NO_x credits would not be permitted to address Selective Enforcement Auditing or in-use testing failures.

The enforcement of the NO_x averaging standard would occur through the vehicle's certificate of conformity. A manufacturer's certificate of conformity would be conditioned upon compliance with the averaging provisions. The certificate would be void *ab initio* if a manufacturer failed to meet the corporate average NO_x standard and did not obtain appropriate credits to cover their shortfalls in that model year or in the subsequent model year (see proposed deficit carryforward provision below). Manufacturers would need to track their certification levels and sales unless they produced only vehicles certified to bins containing NO_x levels of 0.07 g/mi or below and did not plan to bank NO_x credits.

iv. Manufacturers Could Earn and Bank Credits for Early NO_x Reductions

To provide manufacturers with greater flexibility and with incentives to certify, produce and sell Tier 2 vehicles as early as possible, we are proposing that manufacturers could utilize alternative phase in schedules. (See IV.B.4.b.ii above.) Under such schedules, a manufacturer could certify

vehicles to bins having NO_x standards of 0.07 g/mi or below in years prior to the first required phase-in year and then phase its remaining vehicles in over a more gradual phase-in schedule that would still lead to 100% compliance by 2007 (2009 for HLDTs). To the extent that a manufacturer's corporate average NO_x level of its "early Tier 2" vehicles was below 0.07 g/mi, the manufacturer could bank NO_x credits for later use. Manufacturers would compute these early credits by calculating a sales-weighted corporate average NO_x emission level of their Tier 2 vehicles, as in the basic Tier 2 program described above.

These credits would have all the same properties as credits generated by vehicles subject to the primary phase-in schedule. These credits could not be used in the NLEV, Tier 1 or interim program for non-Tier 2 vehicles in any way. However, the NMOG emissions of these vehicles (LDVs and LLDTs only) could be used in the calculation of the manufacturer's corporate average NMOG emissions under NLEV through 2003.

To provide manufacturers with maximum flexibility in the period prior to 2004, when LDV/LLDT useful lives will still be at 100,000 miles, we are proposing that manufacturers could choose between the Tier 2 120,000 mile useful life or the current 100,000 mile useful life requirement for early Tier 2 LDV/LLDTs. (HLDTs already have a 120,000 mile useful life.) Early LDV/LLDT NO_x credits for 100,000 mile useful life vehicles would have to be prorated by 100,000/120,000 (5/6) so that they could be properly applied to 120,000 mile Tier 2 vehicles in 2004 or later.

We are proposing that early banking of HLDLT NO_x credits could not begin until the 2004 model year. This provides a four year period during which early credits could be generated for use in the 2008/2009 HLDLT Tier 2 phase-in. We are concerned that allowing generation of early HLDLT credits in years prior to 2004 could result in credits that are largely windfall credits. Still, we recognize that vehicles that meet the Tier 2 standards early represent an environmental benefit and we request comment on the need for and appropriateness of allowing early banking of HLDLT credits before the 2004 model year.

We recognize that vehicles generating early NO_x credits may be doing so without the emissions benefit of low sulfur fuel, and thus these vehicles may not achieve the full in-use emission reduction for which they received credit. When these credits are used to

permit the sale of higher-emitting vehicles, there may be a net increase in emissions. We believe that the benefits of early introduction of Tier 2 technology described above are significant enough that they are worth the risk of some emission losses that might occur if and when the early credits are used. Also, we believe that some fuel sulfur reductions will occur prior to 2004 as refiners upgrade their refineries or bring new refining capacity on stream in anticipation of the 2004 requirements and take advantage of the phase-in proposed in the gasoline sulfur ABT program (described in Section IV.C. below). We request comment on all aspects of early introduction of Tier 2 vehicles and the proposed provisions for early NO_x credits.

v. NO_x Credits Would Have Unlimited Life

We are not proposing to apply the California schedule of discounting unused credits that was adopted for NMOG credits in the NLEV program. This schedule serves to limit credit life throughout the program by reducing unused credits to 50, 25 and 0 percent of their original number at the end of the second, third and fourth year, respectively, following the year in which they were generated. Because of the declining corporate average NMOG standards in that program, California has decided, and we agree, that it is prudent to limit the lives of credits to prevent manufacturers from being able to accumulate credits and then apply them in such a way as to delay the impact of declining standards. But in this proposed federal program, once the proposed phase-in period ends in model year 2009, all light duty vehicles and trucks would comply on average with a fixed Tier 2 NO_x standard.

Credits would allow manufacturers a way to address unexpected shifts in their sales mix and yet would prevent the program from being abused to allow emission increases by design, since emissions would be capped by the levels in the least stringent bin. The NO_x emission standards in the Tier 2 and interim programs are quite stringent and do not present easy opportunities to generate credits. The degree to which manufacturers invest the resources to achieve extra NO_x reductions provides true value to the manufacturer and the environment. We do not want to take

measures to reduce the incentive for manufacturers to bank credits nor do we want to take measures to encourage unnecessary credit use. Consequently we are proposing that Tier 2 NO_x credits would have unlimited lives. We request comment on the need for discounting of credits or limits on credit life and what those discount rates or limits, if any, should be.

vi. NO_x Deficits Could Be Carried Forward

When a manufacturer has a NO_x deficit at the end of a model year—that is, its corporate average NO_x level is above the required corporate average NO_x standard—we are proposing that the manufacturer be allowed to carry that deficit forward into the next model year. Such a carry-forward could only occur after the manufacturer used any banked credits. If the deficit still existed and the manufacturer chose not to or was unable to purchase credits, the deficit could be carried over. At the end of that next model year, the deficit would need to be covered with an appropriate number of NO_x credits that the manufacturer generated or purchased. Any remaining deficit would be subject to an enforcement action.

To prevent deficits from being carried forward indefinitely, the manufacturer would not be permitted to run a deficit for two years in a row.³⁹ We believe that it is reasonable to provide this flexibility to carry a deficit for one year given the uncertainties that light duty vehicle and truck manufacturers face with changing market forces and consumer preferences, especially during the introduction of new technologies. These uncertainties can make it hard for manufacturers to accurately predict sales trends of different vehicle models. We request comment on this provision.

e. Interim Standards.

i. Interim Standards for LDV/LLDTs

The NLEV program referenced throughout this discussion is a voluntary program in which all major manufacturers have opted to produce LDVs and LLDTs to tighter standards than those required by EPA's Tier 1

regulations. Under the NLEV program, manufacturers must meet an NMOG average outside of California that is equivalent to California's current intermediate-life LEV requirement—0.075 g/mi for LDVs and LDT1s (0.10 g/mi for LDT2s). Currently, NLEV requirements apply only to LDVs and LLDTs, not to HLDTs.

The NLEV program is effective beginning in the northeastern states in 1999 and in the remaining states in 2001, except that the program does not apply to vehicles sold in California or in states that adopted California's LEV program. The program runs at least through 2003 and can run through model year 2005.

Given the Tier 2 phase-in we are proposing, not all LDV/LLDTs covered under NLEV will be subject to Tier 2 standards in the 2004 to 2006 period. Unless EPA adopts a program for full Tier 2 compliance in 2004 (i.e., without a phase-in), these vehicles could revert to Tier 1 standards. The NLEV program, moreover, is a voluntary program that contains several provisions that restrict EPA's flexibility and that could lead to a manufacturer or a covered Northeastern state leaving the program in or prior to 2004. To resolve these concerns we are proposing interim standards for all non-Tier 2 LDV/LLDTs for the 2004–2006 model years. Our interim standards would replace the NLEV program, which would then terminate at the end of 2003. The transition from NLEV to Tier 2 should be smooth because the interim standards are derived from the NLEV standards for LDVs and LDT1s and would ensure that all LDVs, LDT1s and LDT2s that are not certified to Tier 2 levels during the 2004–2006 phase-in period remain at levels at least as stringent as NLEV levels. The standards would also arguments prebring the emission standards for LDT2s into line with those for the LDVs and LDT1s. We propose to align the useful life periods for interim standards with those of the Tier 2 standards (full useful life of 120,000 miles, intermediate useful life of 50,000 miles, as discussed in Section V.A.-2 below)

Tables IV.B.-6 and IV.B.-7 below present interim standards we are proposing for LDVs and LLDTs not covered by Tier 2 standards during the phase in period.

³⁹ Because of the limited duration of the interim programs, we are proposing that a manufacturer could carry a credit deficit in the interim program forward until the 2006 model year (2008 for HLDTs). The interim program, in its entirety, lasts only five years and therefore we see little risk of prolonged deficits.

TABLE IV.B.-6.—FULL USEFUL LIFE (120,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR LDV/LLDTs
[Grams per mile]

Bin No.	NO _x	NMOG	CO	HCHO	PM
5	0.60	0.156	4.2	0.018	0.06
4	0.30	0.090	4.2	0.018	0.06
3	0.30	0.055	2.1	0.011	0.04
2	0.07	0.090	4.2	0.018	0.01
1	0.00	0.00	0.0	0.000	0.0

TABLE IV.B.-7.—INTERMEDIATE USEFUL LIFE (50,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR LDV/LLDTs
[Grams per mile]

Bin No.	NO _x	NMOG	CO	HCHO	PM
5	0.40	0.125	3.4	0.015	.....
4	0.20	0.075	3.4	0.015	.....
3	0.20	0.040	1.7	0.008	.....
2	0.05	0.075	3.4	0.015	.....

We are proposing a corporate average full useful life NO_x standard of 0.30 g/mi for this interim program. LDV/LLDTs, which will already be at NLEV levels, should readily be able to meet this average NO_x standard. Although we have not shown it in the tables of interim standards above, we are also proposing that all of the bins shown for the Tier 2 program (see Tables IV.B.-2 and -3) could be used in the interim program. Thus if a manufacturer had vehicles certified to Tier 2 bins that it did not need to comply with the Tier 2 NO_x average standard and phase in percentage, it would have the additional option to use them in the interim program. We request comment as to whether the number of bins provided in the interim program and their emission levels are appropriate.

The 0.30 g/mi corporate average NO_x standard (and the bins of standards in the above two tables) would apply only to non-Tier 2 LDV/LLDTs and only for the 2004–2006 model years. Manufacturers would compute, bank, average, trade, account for, and report NO_x credits via the same processes and equations described in this preamble for Tier 2 vehicles, substituting the 0.30 g/mi corporate average standard for the 0.07 g/mi corporate average standard in the basic program. Also, EPA would condition the certificates of conformity on compliance with the corporate average standard, as described for Tier 2 vehicles. These NO_x credits would be good only for the 2004–2006 model years and would only apply to the interim non-Tier 2 LDV/LLDTs. Credits would not be subject to any discounts, and credit deficits from the 2004 and 2005 model year could be carried forward, provided they were covered with appropriate credits by the end of

the 2006 model year. NMOG credits from the NLEV program could not be used in this interim program in any way. Credits generated under this interim program would not be applicable to the Tier 2 NO_x average standard of 0.07 g/mi because of our concern that a windfall credit situation could occur. This could happen because credits are relatively easy to generate under a 0.30 g/mi standard compared to generating credits under a 0.07 g/mi standard. The application of credits earned under the interim standard to the Tier 2 standards could significantly delay the fleet turnover to Tier 2 vehicles. The requirements of the interim program would be monitored and enforced in the same fashion as for Tier 2 vehicles.

For the reasons cited above, we believe it is appropriate to extend interim, NLEV-like standards beyond 2003 as a mandatory program and to bring all LDVs and LLDTs within its scope. Manufacturers have already demonstrated their ability to make LDVs and LLDTs that comply at levels well below these standards, and, as the interim standards for LDV/LLDTs are essentially “phase-out” standards, we are not proposing any alternative phase-in schedules or early banking provisions for NO_x credits from the interim LDV/LLDTs.

We request comment on all aspects of the interim standards for LDVs and LLDTs.

ii. *Interim Standards for HLDTs.*

We are also proposing interim standards to begin in 2004 for HLDTs. These vehicles are not included in the NLEV program and will be subject only to the Tier 1 standards prior to model year 2004. Tier 1 standards permit NO_x emissions of 0.98 g/mi for LDT3s and 1.53 g/mi for LDT4s.

The interim standards for HLDTs would apply beginning in the 2004 model year and would phase-in through the 2007 model year, as shown in Figure IV.B.-1. The proposed interim program is based on a corporate average full-life NO_x standard of 0.20 g/mi. Manufacturers would comply with the corporate average HLDLT NO_x standard by certifying their interim HLDTs to any of the full useful life bins shown in Table IV.B.-8. Where applicable, manufacturers would also comply with the intermediate useful life standards shown in Table IV.B.-9. Interim HLDTs not needed to meet the phase-in percentages during model years 2004–2006 would have to be certified to the standards of one of the bins in Table IV.B.-8 (and -9), but would not be included in the calculation to demonstrate compliance with the 0.20 g/mi average. Thus, the emissions of all interim HLDTs would be capped at a NO_x value of 0.60 g/mi.

As with LDV/LLDTs, manufacturers would also have the flexibility to use any of the Tier 2 bins shown in Tables IV.B.-2 and IV.B.-3 as additional bins for interim HLDTs. At the end of each model year, manufacturers would determine their compliance with the 0.20 NO_x standard by calculating a sales weighted average of all the bins to which they certified any interim HLDTs, excluding those not needed to meet the phase-in requirements during 2004–2006.

We believe these interim standards are necessary and reasonable for HLDTs. While these trucks make up a fairly small portion of the light-duty fleet (about 11%), their current standards under Tier 1 are far less stringent than the NLEV standards that apply to current model year LDVs and LLDTs.

Given the delayed phase-in we are proposing for HLDTs, we believe it is appropriate to bring about some interim reductions from these vehicles. Further, manufacturers have already

demonstrated their ability to meet these interim standards with HLDTs. These standards are a reasonable first step toward the Tier 2 program and would provide meaningful reductions in the

near term relative to current certification levels under the Tier 1 emission standards.

TABLE IV.B.-8.—FULL USEFUL LIFE (120,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR HLDTS
[Grams per mile]

Bin No.	NO _x	NMOG	CO	HCHO	PM
5	0.60	0.230	4.2	0.018	0.06
4	0.30	0.180	4.2	0.018	0.06
3	0.20	0.156	4.2	0.018	0.02
2	0.07	0.090	4.2	0.018	0.01
1	0.0	0.0	00.0	0.000	0.0

TABLE IV.B.-9.—INTERMEDIATE USEFUL LIFE (50,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR HLDTS
[Grams per mile]

Bin No.	NO _x	NMOG	CO	HCHO	PM
5	0.40	0.160	3.4	0.015	.....
4	0.20	0.140	3.4	0.015	.....
3	0.14	0.125	3.4	0.015	.....
2	0.05	0.075	3.4	0.015	.....

Given that the interim HLDT standards are “phase-in” standards through 2007 (as opposed to the interim LDV/LLDT standards, which are “phase-out” standards), we are proposing that manufacturers could employ alternative phase-in schedules as proposed for the Tier 2 standards and described in detail in section IV.B.4.b.ii. of this preamble. These schedules provide manufacturers with greater flexibility and we believe they also provide incentive for manufacturers to introduce advanced emission control technology at an earlier date.

Alternative phase-in schedules would have to provide 100% phase-in by the same year as the primary phase-in schedule (2007). Because we are concerned about the possibility of windfall credits from some vehicles that might easily meet the 0.20 corporate average NO_x standard, we are not proposing to permit the generation of credits from interim HLDTs prior to the 2004 model year, although we request comment on this issue.

f. More Stringent Proposed Light-Duty Evaporative Emission Standards. We are proposing to adopt a set of more stringent evaporative emission standards for all Tier 2 light-duty vehicles and light-duty trucks. The standards we are proposing in Table IV.B.-10 represent, for most vehicles, more than a 50% reduction in diurnal plus hot soak standards from those that will be in effect in the years immediately preceding Tier 2 implementation. The higher standards for HLDTs provide allowance for greater

non-fuel emissions related to larger vehicle size.

TABLE IV.B.-10.—PROPOSED EVAPORATIVE EMISSION STANDARDS
[GRAMS PER TEST]

Vehicle class	3 day diurnal + hot soak	Supplemental 2 day diurnal + hot soak
LDVs and LLDTs	0.95	1.2
HLDTs	1.2	1.5

Evaporative emissions from light-duty vehicles and trucks represent nearly half of the light duty VOC inventory projected for the 2007–2010 time frame, according to MOBILE5 projections. We are proposing today to reduce the light-duty evaporative emission standards applicable to diurnal and hot soak emissions by more than 50 percent for most vehicles. Manufacturers are currently certifying to levels that are, on average, about half of the current standards, and in many cases, much less than half the standards. Thus, meeting these proposed standards appears readily feasible. Even though manufacturers are already certifying at levels much below the current standard, we believe that reducing the standards will result in emission reductions as all manufacturers seek to certify with adequate margins to allow for in-use deterioration. Further, we believe that tighter standards will prevent “backsliding” toward the current

standards as manufacturers pursue cost reductions.

As mentioned in section IV.B.-4.b above, we are proposing to phase in the Tier 2 evaporative standards by the same mechanism as the Tier 2 exhaust standards; e.g., 25/50/75/100 percent beginning in 2004 for LDV/LLDTs and 50/100 percent beginning in 2008 for HLDTs. (as shown in Figure IV.B.-1) As for the proposed exhaust standards, alternative phase-in plans would also be available.

The evaporative emissions standards we are proposing are the same as those that manufacturers’ associations proposed during the development of California’s LEV II proposal; California ultimately did not adopt these standards. We request comment on all aspects of these proposed evaporative standards and their likely impact on in-use evaporative emission levels. We also request comment on adopting the evaporative emissions standards and phase-in schedule that California adopted (representing about a 75 percent reduction from the standards that will otherwise be in place).

C. Our Proposed Program for Controlling Gasoline Sulfur

When we discussed gasoline sulfur control with the American Petroleum Institute, the National Petrochemical and Refiners Association, and other representatives of the oil industry, they laid out several major points for us to consider in development of our proposal:

- A regional approach to gasoline sulfur control would be more appropriate than a nationwide program. Gasoline sulfur control should be targeted primarily at the areas of greatest environmental need.

- Within the regions, gasoline sulfur standards should be uniform. State fuel initiatives different from any federal regional standards could result in supply disruption and price volatility and should be avoided.

- Adequate lead time would be critical to a successful implementation. Implementing gasoline sulfur control over the next few years involves a number of demands and uncertainties. For example, the technology that is the lowest cost and more cost effective requires sufficient time to develop.

- Permitting and construction of all of these refineries in just four years would be a major challenge. Therefore, streamlining of the permitting process could help address lead time concerns.

- If sulfur levels in diesel fuel were also going to be reduced (or any other changes to gasoline or diesel fuel required) industry would need to know soon so investment discussions could be coordinated.

We have seriously considered the oil industry's input in developing our proposal. While we are not proposing a regionally-based program, as discussed below, we believe the nationwide program we are proposing would provide flexibility in response to many of these concerns about uncertainty and would provide uniformity on a national basis.

The next section of the preamble describes in more detail the industry proposal and our response to their approach, including the concepts of national versus regional scope and the level of the standard. We recognize that refineries face many uncertainties and constraints, including potential future regulation of diesel sulfur that would affect the timing of their ability to meet the proposed gasoline sulfur levels. Consequently, also in this section we propose and request comment on two provisions, a sulfur averaging, banking and trading program and permit streamlining, designed to provide flexibility, to increase lead time, and to ease concern about how other uncertainties would affect decision making concerning gasoline sulfur control.

1. Oil Industry Proposal

During the development of this proposal, a large part of the oil refining industry, represented by the American Petroleum Institute (API) and the National Petrochemical and Refiners Association (NPRA), offered a series of constructive recommendations for the design of a gasoline sulfur control program. These proposals, which have progressively addressed more and more of the concerns we had raised about such a program, have a key element in common—the suggestion that different levels of gasoline sulfur control be applied to different regions of the country. These industry representatives observe that some areas of the country need the emission reductions to be achieved from Tier 2 LDVs and LDTs more than others, and that the gasoline distribution system can supply different gasolines to different geographical regions.

The most recent proposal from these members of the oil industry would provide gasoline meeting an average sulfur level of 150 ppm (capped at 300 ppm) to a large region of the U.S. This proposal would cover all states east of the Mississippi river, plus Missouri, Louisiana, and the eastern half of Texas (and any RFG areas in the West), and would begin in 2004.^{40, 41} The remainder of the country (excluding California) would receive gasoline meeting a 300 ppm average (450 ppm cap). Further reductions in sulfur levels in eastern states, to a 30 ppm average/80 ppm cap, would be required starting in 2010, unless a study performed in 2004–06 demonstrated no air quality need for further sulfur reductions. If this study found an air quality need for additional reductions, EPA would make recommendations about the appropriate sulfur levels (if different from the proposed 30/80 ppm levels) and the area to receive this lower sulfur gasoline (if different from the region receiving the 150 ppm average in 2004). The industry representatives thus characterized the 2010 standards as “rebuttable,” standards because EPA could have to initiate additional regulatory actions to implement the final 2010 standards.

The arguments presented by the members of the oil industry for why this regional program would be reasonable include a consideration of the technical needs of the vehicles and the ability of refining industry to meet the

requirements. Based on testing and analyses performed by oil companies and their trade associations, they concluded:

- Automakers can select from a range of design factors to reduce sulfur sensitivity, including engine design, catalyst size, catalyst location, control of air/fuel mixtures, the types and amounts of precious metals used in the catalyst;

- Vehicles can be designed to fully reverse the sulfur effect while meeting both Tier 2 and SFTP emission standards, even if operated for a long time (1,000 miles) on high sulfur fuel;

- This division of the country into two sulfur regions “matches cost to consumers with benefits,” since the areas with the greatest air quality need would get the lower sulfur gasoline, while consumers and refiners located in areas without substantial air quality need would not have to pay the higher costs resulting from the lower levels; and

- The regions, as defined, would optimize gasoline distribution based on the existing distribution system, thus reducing the potential for supply shortfalls or other difficulties.

Following the same methodology we used to estimate the future emissions and emissions reductions that would result from our combined Tier 2/ gasoline sulfur proposal (presented above in Section III), we estimated the emissions that would occur from a program that combined our proposed Tier 2 vehicle standards with the gasoline sulfur program proposed by the oil industry.⁴² As explained below, we believe vehicles meeting the proposed Tier 2 standards that consistently use the higher sulfur gasoline would emit at higher levels than those that consistently use 30 ppm sulfur gasoline, and that vehicles that travel between the East and West (as defined by the oil industry proposal) would experience an irreversible (permanent) loss in as much as 50 percent of the emissions performance after being exposed to high sulfur levels. As a result, our analysis shows somewhat higher total emissions for the program incorporating the oil industry's proposal than would occur if this sulfur effect did not occur. Since the “rebuttable standard” leaves open the possibility that the eastern region will not receive 30 ppm sulfur levels in 2010 and beyond (upon a finding of no air quality need for further reductions), we analyzed that scenario as well. Table IV.C.–1 shows the NO_x emissions we

finalize the proposed Tier 2 vehicle standards with sulfur levels averaging significantly above 30 ppm. However, for the purposes of this analysis we did not change the modeled Tier 2 vehicle standards.

⁴⁰ The industry representatives offered to meet these standards earlier if Tier 2 vehicles were introduced before 2004.

⁴¹ While a majority of oil companies have approved this proposal, not every U.S. refiner supports all of the provisions summarized here.

⁴² As explained in this section, because of sulfur's effect on emissions, we do not believe we could

calculated for select years for these two scenarios, compared to our proposal.

TABLE IV.C.-1.—NATIONWIDE NO_x Emissions from Tier 2 Standards and Oil Industry Proposed Gasoline Sulfur Program

Year	Total NO _x tons		
	EPA proposal	Oil industry proposal 2004: 150/300 ^a 2010: 30/300	Oil industry proposal, 2010 standard rebutted 2004: 150/300 ^a 2010: 150/300
2007	2,423,000	2,821,000	2,821,000
2010	1,859,000	2,021,000	2,292,000
2015	1,242,000	1,424,000	1,701,000
2020	1,023,000	1,221,000	1,508,000

^a Sulfur average in East/sulfur average in West.

The industry's proposals have been valuable in helping EPA and all the major stakeholders focus on key issues of the design of gasoline sulfur control options. We have seriously considered these proposals as well as the responses of others to the proposals. We have paid particularly close attention to the issue of the reversibility of gasoline sulfur's emissions impacts, since the environmental benefits to be gained from a regional sulfur program in combination with national Tier 2 vehicle standards hinge on the degree to which the negative impact of high sulfur levels can be reversed when a vehicle is operated later on low sulfur gasoline. We encourage comments on the appropriateness and feasibility of a regional gasoline sulfur program such as the one recommended by the oil industry (in combination with national Tier 2 vehicle standards as proposed today). We are particularly interested in analyses of the environmental and economic consequences of such a proposal.

In addition, others have raised the idea of an alternative temporary regional gasoline sulfur control program. Under this program, which would last from 2004 through 2008, gasoline refined in PADD IV (generally covering the Rocky Mountain states and representing about 5 percent of U.S. gasoline production) would meet an average sulfur standard of 150 ppm with a 300 ppm cap while the remainder of the country would meet a 30 ppm average beginning in 2004. Gasoline refined in PADD IV would have to comply with the 30 ppm average/80 ppm cap beginning in 2009.

This approach would provide the smaller refineries in this region with additional time to make the significant capital investments to desulfurize gasoline. In part because of the smaller scale of the PADD IV refineries, we

estimate that the cost of desulfurization would be larger for these refineries than the estimated average cost of meeting a 30 ppm standard.

While the Rocky Mountain region's air quality problems are generally less severe than those in many other parts of the country, we believe that the emission reductions provided by today's proposed program would still be important, for several reasons.

- The Denver and Salt Lake City areas will have ozone levels in the 2007 time frame within 15 percent of the national ambient standards and would benefit from the lowest possible gasoline sulfur levels to assist their efforts to maintain their ozone attainment status.

- Other benefits of the proposed program would also be forgone during the interim period, as discussed above, including the lower secondary PM emissions, improved visibility, and reduced toxic emissions.

- Irreversible damage to vehicle emission control systems in those vehicles that have been fueled in this region at any time during their life would occur.

- PADD IV gasoline is marketed outside the borders of PADD IV.

- The vehicle emission standards would be more difficult to enforce if there were an extended period when vehicles were exposed to gasolines of more than one sulfur level.

We seek comment on the appropriateness of this approach, including consideration of the cost, air quality, and public health impacts as compared to our proposal.

As discussed below, however, we are not proposing a gasoline sulfur control program that incorporates a regional element. We have not been able to satisfy our concerns with the irreversibility of the sulfur effect, since it is not clear that vehicle or catalyst

design changes will solve the problem and since we do not believe that the effect is negligible. Without a national low sulfur gasoline program, the air quality benefits of our program would be reduced, particularly in the initial years when the emissions reductions will be most required to help many states achieve attainment with the National Ambient Air Quality Standards. A national program providing low sulfur gasoline everywhere could ensure that the vehicles designed to meet the proposed Tier 2 standards achieved the desired emissions performance, that the investments made by car buyers in cleaner technology would be justified, and that the needed emissions reductions occurred beginning as early as 2004.

2. Why EPA Believes Gasoline Sulfur Program Must be Nationwide

As explained in Section IV.C.3. below, we are proposing that our gasoline sulfur control program apply throughout the country, rather than in a more limited geographic area along the lines of what the oil industry has proposed. In determining the appropriate geographic scope for our proposed program, we considered the implications for the emission control hardware of Tier 2 vehicles, based on the degree to which the sulfur impact on catalysts may be reversible. We considered the degree to which sulfur will impact advanced technology engines and aftertreatment systems. We weighed the impact that sulfur has on onboard diagnostic systems, and what that may mean for state inspection and maintenance programs. We evaluated the environmental implications beyond the ozone benefits to be realized. We also considered the ability of the entire refining industry to control gasoline

sulfur at essentially the same time. After review of all of these issues, it is our judgement that a national program is appropriate and reasonable. The following sections explore these issues in more detail.

a. *Sulfur's Negative Impact on Tier 2 Catalysts Is Irreversible.* We have reviewed data from several test programs designed to characterize both the effect of high sulfur levels on vehicle emissions and the ease and completeness with which this effect was eliminated or "reversed" once the vehicle was operated on low sulfur gasoline. These test programs were performed by auto manufacturers, oil companies, emission control equipment manufacturers and their various associations. All of the vehicles included in these test programs met either EPA Tier 1 or California LEV emission standards and were not designed to comply with either EPA or California supplemental federal test procedure (SFTP) standards. The SFTP standards are intended to better address and control emissions under driving conditions not captured when compliance with our FTP-based exhaust emissions standards is demonstrated, such as operation with the air conditioning turned on or driving at very high rates of acceleration and vehicle speeds (hereafter referred to simply as aggressive driving). This is an important factor in assessing sulfur reversibility, because in contrast to the vehicles that have been tested to date, Tier 2 vehicles would have to meet more stringent exhaust emission standards and would have to meet these standards over the wider variety of operating conditions included in the SFTP provisions. Hence, they would have to be designed to meet the emission standards under all such operating conditions; these design changes may influence the ease with which the sulfur effect is reversed, as explained below.

The vehicles tested exhibited a wide range of reversibility, for reasons that are not fully understood. The LEVs tested in these programs showed, on average, that the effect of operation on high sulfur fuel was reversed after operation on low sulfur fuel if aggressive driving conditions occurred once the vehicle was switched to low sulfur fuel. Roughly 85% of the increase in NMOG and NO_x emissions resulting from high sulfur levels was reversible after operation on low sulfur fuel coupled with more moderate urban driving. (CO emissions were somewhat less reversible under these conditions.) Individual vehicles showed a wide range of responses, however. For

example, many vehicles showed substantial irreversibility for one pollutant (NO_x or NMOG) while very high reversibility for the other. In some cases, only half of the initial emission increase due to high sulfur could be removed by driving on low sulfur fuel. Catalyst temperature, the mixture of air and fuel in the engine and the design of the catalyst are all believed to be important factors that affect the reversibility of the sulfur impact. However, to date, no one has been able to demonstrate the specific contributions of these various factors. Also, no one has been able to design a catalyst with both high conversion efficiencies and no or very low sensitivity to sulfur.

These data indicate that the effect of high sulfur levels on emissions from current LEV models driven over a wide variety of operating conditions appears to be partially reversible, particularly if the vehicle is periodically driven aggressively. However, were these vehicles required to meet the SFTP standards, we believe that the degree of reversibility would have been substantially worse.

Studies of the adsorption and removal of sulfur on catalysts have demonstrated that wide variations in the mixture of air and fuel entering the engine (alternating between having a shortage to having an excess of oxygen) directionally help to remove sulfur from the catalytic surface. When driven aggressively, the mixture of air and fuel in the engines of most current vehicles (those not certified to SFTP standards) is quite variable, because precise control of the mixture of air and fuel is primarily done to control emissions. Meeting the SFTP standards will ensure that manufacturers carefully control the mixture of air and fuel over essentially all in-use driving conditions. This absence of widely varying mixtures of air and fuel could therefore inhibit the removal of sulfur from the catalyst once operation on high sulfur fuel ceased. Thus, we project that the sulfur effect on vehicles meeting both the LEV and SFTP standards (vehicles sold after 2000) and vehicles meeting the Tier 2 standards (which will include low exhaust emissions and low SFTP emission standards, too) will be less reversible than the effect shown on the vehicles included in the test programs discussed here.

Another factor that may substantially influence sulfur reversibility is the amount of time the catalyst is exposed to high sulfur fuel. With only a few exceptions, the vehicles in the test programs mentioned above were only driven on high sulfur fuel for a few miles (well under 100) before low sulfur

fuel was reintroduced. This appears to limit the extent to which sulfur could permanently disable the effectiveness of the catalyst. However, one vehicle was tested with an aged catalyst system (to simulate a vehicle near the end of the useful life of 100,000+ miles) and driven for extended mileage (more than 1,000 miles) on high sulfur fuel before being retested on low sulfur fuel. (As with the other vehicles, this test vehicle was not designed to be SFTP-compliant; SFTP compliance could further complicate the ability of a vehicle to reverse the sulfur effect.) For this vehicle, only 50% of the NO_x emission effect of high sulfur fuel was reversed upon operation on low sulfur fuel. This is much less than the 85–100% reversibility found with short term exposure to sulfur. Thus, we project that in-use emissions performance of Tier 2 vehicles operated for some time on high sulfur fuel (as would occur if a regional sulfur control program permitted high sulfur levels in a large geographic area) might be substantially compromised. For example, in-use emissions of passenger cars designed to meet the 0.07 g/mi NO_x standard and operate on 30 ppm gasoline would actually be increased by about 50 percent if they were operated on 300 ppm gasoline at any point in their life. Such vehicles might only recover half of the emissions performance otherwise expected, perhaps even less once SFTP compliant designs are incorporated. Furthermore, we believe this effect would be essentially permanent; continued operation with low sulfur gasoline would be unlikely to improve the emissions performance.

The Draft RIA presents our complete evaluation of sulfur irreversibility, based on the data we have obtained to date. We encourage comments on this analysis. Furthermore, we are seeking comment on and will be considering the studies described in Appendix B of the Draft RIA, plus any new information developed or received before a final decision. We welcome any additional data characterizing the irreversibility of the sulfur effect, including what vehicle or catalyst design factors may make exposure to sulfur more or less reversible.

The preceding discussion focused on the irreversibility of the sulfur impact on emissions from current gasoline engine technologies. There are new technologies under development, which could be sold in the U.S. in the middle of the next decade (the same time that Tier 2 vehicles are being introduced), which also appear to be very sensitive to sulfur and largely unable to reverse this sulfur impact. One of these

technologies is the direct injection gasoline (GDI) engine. These engines utilize much more air than is needed to burn the fuel, unlike conventional gasoline engines that operate under conditions where only just enough air to completely burn the fuel is introduced into the engine. This GDI technology allows these engines to be up to 25% more fuel efficient than current gasoline engines and to emit up to 20% less carbon dioxide. GDI engines are currently being introduced in both Japan and Europe (which have or will soon require low sulfur gasolines). Because of the significant operating differences with GDI engines, these vehicles will likely require emission control technology substantially different from that used on conventional gasoline engines. For example, a GDI engine may require a NO_x adsorber to meet the proposed Tier 2 NO_x standard. High fuel sulfur levels quickly and permanently degrade the performance of these NO_x adsorbers. Thus, to enable the sale of advanced, high efficiency GDI engines in the U.S. under the Tier 2 standards, it appears that low sulfur gasoline would have to be available nationwide by the time this technology becomes available.

The fuel cell is another promising propulsion system that is being developed for possible introduction to consumers early in the next century. Fuel cells are being designed to operate on a variety of fuels, including gasoline and diesel fuel. The basic fuel cell technology is highly sensitive to sulfur. Almost any level of sulfur in the fuel will disable the fuel cell. One possible solution is to install a technology that essentially filters out the sulfur before it enters the fuel cell. However, such sulfur "guards" are costly and could not practically be used like a disposable filter (requiring the vehicle owner to change the sulfur guard frequently, much like changing an oil filter) in situations where constant exposure to high sulfur levels occurs. (Even exposure to relatively low sulfur levels will likely require periodic replacement of the sulfur guard to ensure adequate protection for the fuel cell.) Therefore, the amount of sulfur in the fuel must be limited to that which can be removed by one or at most two sulfur guards over the life of the vehicle. Thus, in order for fuel cells operating on gasoline to be feasible in the U.S., low sulfur fuels would have to be available nationwide by the time this technology becomes available.

b. *Sulfur Has Negative Impacts on OBD Systems and I/M Programs.* As discussed in more detail in the RIA, EPA believes that sulfur in gasoline can

adversely impact the onboard diagnostic (OBD) systems of current vehicles as well as vehicles meeting the proposed Tier 2 standards. This is an important factor supporting the need for a national sulfur control program. EPA's onboard diagnostics (OBD) regulations require that all vehicles be equipped with a system that monitors, among other things, the performance of the catalyst and warns the owner if the catalyst is not functioning properly. The OBD catalyst monitor is designed to identify those catalysts with pollutant conversion efficiencies that have been reduced to the extent that tailpipe emissions would exceed a specified multiple of the applicable hydrocarbon emissions standard. For California LEV and federal NLEV vehicles, that multiple is 1.75 times the applicable hydrocarbon emissions standard; for federal Tier 1 vehicles, that multiple is 1.5 times the applicable hydrocarbon standard added to the 4,000 mile emission level.

We want to ensure that OBD systems operate correctly, and thus the possibility that gasoline sulfur may interfere with these systems was another consideration when evaluating the need for a national sulfur program. Our evaluation of sulfur's effect on OBD systems was summarized in a staff paper in 1997.⁴³ We concluded that sulfur can affect the decisions made by the OBD systems. Sulfur appears to affect the oxygen sensor downstream of the catalyst, which is used in the OBD systems, and it is not clear that the conditions that seem to reverse sulfur's effect on the catalyst will also reverse any sulfur impact on the downstream oxygen sensors. Indirectly, sulfur impacts OBD systems because it can impair a catalyst that would otherwise be operating satisfactorily, thereby triggering the OBD warning lights. While this would indicate a properly operating OBD system, auto manufacturers have expressed the concern that consumers using high sulfur fuel may experience OBD warnings much more frequently than they would if operating on low sulfur gasoline, and that this could lead to a loss of consumer confidence in or support for OBD systems. Consumers may then ignore the OBD warning system and drive a potentially high emitting vehicle (which may have nothing to do with exposure to sulfur), contributing even more to air quality problems. Another possible scenario is

that the OBD system may be impaired by sulfur in such a way that it does not register an improperly functioning catalyst, even if the catalyst is impaired for reasons unrelated to exposure to sulfur. This would defeat the purpose of OBD systems.

The NLEV program provides manufacturers the opportunity to request extra preconditioning of vehicles that they believe may be negatively impacted by high sulfur levels, when such vehicles may be included in in-use testing by EPA. We consider such requests on a case-by-case basis. One manufacturer has already requested, and received approval for, a special preconditioning cycle to remove any sulfur from the catalyst of a specific vehicle model, should that vehicle model be included in any in-use testing. We are concerned that a regional gasoline sulfur program would increase the likelihood that manufacturers would be compelled to request special preconditioning cycles for test programs, and believe that the one request we have granted already is indicative of the potential problems that would arise under a regional gasoline sulfur program. While the use of a special preconditioning cycle can protect the manufacturer from liability for high in-use emissions resulting purely from exposure to high sulfur, the in-use emissions from these vehicles would still be higher than expected based on the certified design.

To the extent that future catalysts are more sensitive to sulfur as emission standards become more stringent, the impact of sulfur on catalysts and catalyst monitors becomes proportionately more critical. The more stringent the Tier 2 vehicle emission standards are, the more stringent the OBD malfunction thresholds will be, because those thresholds are expressed as multiples of the applicable hydrocarbon emission standard. Therefore, even if the sulfur effect on future technology vehicles were equivalent in absolute terms to the effect on current technology vehicles, would become more significant in relative terms on those future technology vehicles. Because of this (and our concern about how reversible the effect of sulfur may be), we are concerned that a regional sulfur program could create widespread problems with OBD catalyst monitors for vehicles traveling outside of the low sulfur region. A regional sulfur program would likely result in higher emissions from Tier 2 vehicles in high sulfur regions, and may also result in more OBD-identified catalyst failures in those areas. We are not aware of a technical solution to this problem.

⁴³ U.S. EPA, "OBD & Sulfur Status Report: Sulfur's Effect on the OBD Catalyst Monitor on Low Emission Vehicles," March 1997, updated September 1997.

The geographic scope of a sulfur control program also has implications for inspection and maintenance (I/M) programs. A regional sulfur control program could affect I/M programs located outside of the sulfur control region. The emissions measured in these I/M programs would likely be higher than those measured in the low sulfur region, possibly necessitating the use of unique emission cut points for Tier 2 vehicles registered in the higher sulfur region. I/M programs located outside of the sulfur control area would need to consider the possibility that the presence of OBD failure codes may be caused primarily by the use of high sulfur fuels, and may have to provide for a catalyst regeneration procedure to try to reverse the sulfur buildup to get a reading of how the catalyst is operating. This could lead to unequal treatment of vehicles located in different regions of the country based solely on their exposure to sulfur, unnecessarily complicating I/M programs. Furthermore, many I/M areas intend to rely heavily on OBD checks rather than emission checks in the future, making the correlation of OBD checks to the emissions from the vehicles very important. Therefore, the potential scenario of increased emissions without OBD detections (due to sulfur-fouled catalyst monitors) would make OBD a less attractive I/M tool in areas with high sulfur fuel. A national program, even one providing limited, temporary exemptions for small refiners, would avoid many of these concerns.

c. Sulfur Reductions Would Ensure Lower Emissions of Many Pollutants. One of the major arguments supporting a regional program is that such a program could be targeted at the majority of areas needing ozone controls by getting the NO_x and VOC reductions in the areas with the greatest ozone pollution problems. However, as our estimates of the total emission reductions to be achieved through the combined Tier 2/gasoline sulfur program show (presented above in Section III), there are substantial NO_x and VOC reductions to be attained nationwide with our proposal. In Table IV.C.-1 above, we estimated that our national sulfur control proposal would result in 9–22% fewer NO_x emissions compared to the regional sulfur program proposed by the oil industry, presuming that we implemented Tier 2 vehicle standards consistent with today's proposal and depending on the year in which the emissions reduction is evaluated. The higher emissions from a regional program would be due to the reduced emissions performance of

vehicles (Tier 2 and others) located in the West where higher sulfur levels would be permitted and the loss of emissions performance for vehicles located in the East that travel to the West (or are relocated from the West) and are expected to suffer irreversible catalyst damage due to the higher sulfur levels in the West. Even in 2010 and beyond, when the oil industry's proposed program would result in sulfur levels consistent with our proposal in the East, Tier 2 vehicles located in the West or traveling from West to East would see substantial reductions in emissions performance. Furthermore, if the oil industry's proposed 2010 standard were not implemented (on the basis of the findings of the study they propose for 2004–06), the difference in emissions reductions between our proposal and the oil industry proposal climbs to 16–47% fewer NO_x emissions. Hence, the ozone benefits of this proposal would be somewhat smaller if a regional gasoline sulfur program were adopted.⁴⁴

While the benefits of reducing ozone precursors through gasoline sulfur reductions are generally limited to a nonattainment area (as well as areas trying to maintain their attainment status, including those within 15% of the NAAQS standard and upwind locations that contribute transported ozone precursors into those areas), reductions in emissions of other pollutants have broader geographic benefits, as discussed in Section III. For example, sulfur reductions would help reduce emissions of particulate matter, providing some benefit to PM nonattainment areas (which may or may not coincide with ozone nonattainment areas) as well as areas with visibility problems. Sulfur reductions will also have benefits for areas across the country with acid deposition problems. Furthermore, sulfur reduction, by enabling tighter Tier 2 standards and by improving the emissions performance of the vehicles already on the road, will lead to fewer NMOG emissions, since, as explained in the Draft RIA, NMOG emissions are also impacted by gasoline sulfur (although to a lesser extent than NO_x emissions). Some of the NMOG emissions reduced are air toxics. As described in Section III above, air toxics, also known as hazardous air pollutants, or HAPs, contribute to a variety of human health problems. Thus, a national sulfur reduction program would achieve larger benefits than a regional program, and people living in the region with higher-sulfur gasoline

would not get the full benefits of reduced air toxics emissions and could suffer adverse health consequences.

d. The Refining Industry Can Control Gasoline Sulfur. While evaluating the merits of a national gasoline sulfur program, in addition to considering the technical requirements for vehicles to meet the proposed Tier 2 standards and the potential air quality benefits that could be realized, we also considered the ability of refiners to reduce gasoline sulfur in essentially every gallon of gasoline by 2004. Based on this evaluation, we believe it is technically feasible for refiners to meet the proposed standards and that it is possible for them to do so in the proposed time frame. A summary of our analysis is presented here; we refer the reader to the Draft RIA for more details.

Technologies that enable refiners to significantly reduce the level of sulfur in gasoline have been available for many years. California began requiring low sulfur gasoline (30 ppm average/80 ppm cap) in 1996.⁴⁵ Refiners in California are currently producing gasoline that averages around 20 ppm sulfur. In addition, low sulfur gasoline standards similar to our proposal are, or soon will be, implemented by countries in Asia and Europe, and by Canada. These programs provide additional evidence that desulfurization technologies are available to meet a low sulfur gasoline standard, and that the majority of refiners in the industry can reasonably be expected to install and operate these technologies if given a reasonable amount of lead time.

When considering the implications of a sulfur standard, U.S. refiners can be grouped into two major groups: those already producing gasoline that meets, or nearly meets, the proposed requirements, and those that would have to make processing changes to comply. The majority of refiners currently producing relatively low sulfur gasoline today (roughly 15 percent of domestic production) could meet the proposed gasoline sulfur standard with no or very little additional capital investment, and at most a small increase in operating cost. These refiners have achieved their current sulfur levels using traditional sulfur removal technologies, or, in some cases, with refinery configurations that can accommodate very low sulfur crude oils.

Two examples of these traditional technologies are hydrotreating or hydrocracking the feed to the fluidized catalytic cracker unit (FCC), the unit in

⁴⁴ See the Draft RIA for information on the evaluation of this and other alternatives.

⁴⁵ Prior to that date, gasoline in California was capped at 300 ppm sulfur.

the refinery that produces the largest fraction of gasoline blendstock. These processes are capital intensive and demand large amounts of hydrogen and other utilities, resulting in high operating expenses. Another example is desulfurization of the gasoline stream coming from the FCC unit. Treating the FCC gasoline stream has the advantage of lower capital and operating costs than treating the FCC feed. The major concern with this approach is that the octane value of this gasoline blendstock is reduced at the same time that sulfur is reduced, particularly when the sulfur is being reduced to low levels. This lost octane must be made up by increasing the production of high-octane blendstocks from other units of the refinery, or by the addition of oxygenates. Making up this octane loss adds significantly to the cost of desulfurizing FCC gasoline. We seek comment on any implications of this proposal of recent activities in California relating to the oxygenate MTBE, and of refiners' possible use of oxygenates other than MTBE to make up any octane loss.

Based on current sulfur levels, we believe the majority of U.S. refiners would have to install at least one desulfurization processing unit to lower gasoline sulfur to the proposed levels. Since installation of traditional desulfurization technologies could be quite costly for most refiners, we have been very encouraged to see the recent development of several improved desulfurization processes that are now available at reduced capital investment and operating costs (and which avoid the octane loss that increases the costs of traditional technologies). Examples of these technologies are CDHydro and CDHDS (licensed by the company CDTECH) and OCTGAIN 220 (licensed by Mobil Oil).⁴⁶ These technologies use conventional refining processes combined in new ways, with improved catalysts and other design changes that minimize the undesirable impacts (such as the substantial loss in octane) and maximize the effectiveness of the desulfurization approach. Since these processes provide less costly ways to reduce gasoline sulfur, we presume that they would be used by most refiners to meet the proposed gasoline sulfur standard, and have based our economic

assessment (summarized in Section IV.D. below) on that presumption.

Some in the refining industry have told us that since there have not been long-term commercial demonstrations of these newer technologies, they would not consider these technologies to be viable and, if faced with our proposed requirements in 2004, they might select the more traditional sulfur reduction processes, resulting in a higher cost to produce low sulfur gasoline. While we understand the hesitation on the part of some in the oil industry to invest in these improved sulfur reduction technologies, we believe many, if not all, of their concerns would be addressed in the next few years. The industry would have four years to prepare to meet our proposed gasoline sulfur requirements. Refiners have been provided a similar amount of time to comply with fuel programs in the past (highway diesel fuel sulfur control, reformulated gasoline under the complex model) and some have told us that three to four years is adequate to allow them to meet gasoline sulfur standards similar to those proposed today. Refiners would have time to grow more comfortable with the improved processes after they have obtained additional data and information from the vendors that license these technologies. Refiners would be able to have their FCC gasolines tested in vendors' pilot plant facilities, which would provide each refiner with more specific information on how the process would function in their particular refineries. Furthermore, we have been informed that there will soon be demonstrations of at least two of the improved desulfurization technologies in existing refineries; the entire industry will benefit from these efforts.

We have heard concerns that small refiners, particularly those in the Rocky Mountain region, would bear proportionately higher economic burdens if they were required to produce gasoline meeting the same sulfur levels as larger refineries located in the Gulf Coast and East. The severity of these economic impacts could result in unreasonably high gasoline prices, potential refinery closures, and supply shortages, according to those raising the concerns. Our analysis, presented here and in the Draft RIA, leads us to conclude that these severe events would not occur. Furthermore, we have recently received a study that suggests that, in fact, small refiners in the Rocky Mountain region will incur costs only slightly higher than the national

average.⁴⁷ This study concludes that the potential for refinery closures in this region in response to a gasoline sulfur regulation is small, and that even if ten percent of gasoline were negatively impacted there would not be a significant supply shortfall in the region. We have not yet reviewed this study in detail, and we encourage comments on the analysis presented in it. However, having considered the concerns raised about small refiners in general, including those in the Rocky Mountain region, we are proposing special provisions for small refiners to address their unique challenges.

The advent of the improved desulfurization technologies creates an opportunity for a stringent, nationwide, and yet relatively low-cost, sulfur control program. Such a program would still likely be challenging for many if not most refiners. In the program proposed today, we have built in a number of flexibilities that would ease the task of compliance for refiners while maintaining the level of air quality improvements of a less flexible program. In particular, Section IV.C.-3 below presents a sulfur averaging, banking, and trading program that effectively extends the final compliance date by two years. In consideration of all these factors, we believe that under the proposed program, all refiners nationwide should be able to produce very low sulfur gasoline without suffering severe financial consequences.

e. Other Stakeholders Support National Gasoline Sulfur Control. In addition to our technical arguments for concluding that gasoline sulfur should be controlled nationwide, we have considered the positions of other parties. Many stakeholders to our decision have expressed to us their support for a national sulfur control program. Automakers, represented by the American Automobile Manufacturers Association (AAMA) and the Association of International Automotive Manufacturers (AIAM), have petitioned the Agency to implement a national, low sulfur gasoline program "as soon as possible." State organizations such as STAPPA/ALAPCO and the Ozone Transport Commission (OTC) have made similar resolutions, and many individual states have also voiced support for a national program. Environmental organizations, such as the American Lung Association

⁴⁶ In addition to these technologies, other companies have told us that they are working on developing their own desulfurization technologies. Furthermore, there have been recent advances in an approach called biodesulfurization, which employs bacteria that selectively desulfurizes petroleum. We believe refiners will have an increasing number of technology options to meet our proposed standards.

⁴⁷ MathPro, Inc., "Likely Effects on Gasoline Supply in PADD 4 of a National Standard for Gasoline Sulfur Content," Prepared for Association of International Automobile Manufacturers, DaimlerChrysler Corporation, Ford Motor Company, and General Motors Corporation, March 19, 1999.

and the American Council for an Energy Efficient Economy, favor a national sulfur control program, as well. The arguments for a national program presented by these parties include:

- High sulfur levels significantly impair the performance of today's emission control technologies, reducing the emissions benefits of current and advanced vehicles,
- Gasoline sulfur contributes to air quality problems not directly benefitted by vehicle emission standards (PM, SO_x, hazardous air pollutants),
- The sulfur impact on emission controls is largely irreversible, and
- If sulfur levels are not controlled, new, more fuel-efficient vehicle technologies that are as or more sulfur-sensitive than today's vehicles will not be introduced in the U.S.

3. Proposed Gasoline Sulfur Standards

We are proposing to require substantial reductions in gasoline sulfur levels nationwide. Not only would these standards enable the stringent tailpipe emission standards we're proposing for Tier 2 vehicles and ensure that these low emission levels would be realized throughout the life of the vehicle, but they would also help to reduce emissions of pollutants that endanger public health and welfare from vehicles already on the road, including NLEV vehicles. The following sections summarize the proposed requirements for gasoline refiners and importers, special provisions for small refiners, and possible changes to construction permitting requirements that would enable refiners to install gasoline

desulfurization technology in a timely manner. We also raise the potential need for changes to diesel fuel to enable diesel technologies to meet the proposed Tier 2 standards. Section VI. provides additional information about the compliance and enforcement provisions that would accompany these proposed requirements. More detailed information in support of the conclusions presented in this section of the proposal is found in the draft Regulatory Impact Analysis.

a. *Standards for Refiners and Importers.* Our proposed gasoline sulfur program balances the goal of enabling Tier 2 emission control technologies with the goal of lowering sulfur as early as the refining industry can practically achieve the required levels. To accomplish both of these goals, we are proposing a set of standards combined with a sulfur averaging, banking, and trading (ABT) program. This proposed overall program would achieve the desired sulfur levels, on average, beginning in 2004—the first year Tier 2 vehicles will be sold—while proposing to allow the use of credits towards compliance with refinery average standards indefinitely (within the limits of per-gallon caps). These requirements would apply to all gasoline sold in the U.S.,⁴⁸ based on our belief that emissions must be reduced nationwide to adequately protect public health and the environment and that Tier 2 vehicles operated everywhere in the U.S. require protection from the harmful impacts of gasoline sulfur.

Table IV.C.-2. presents the proposed standards for gasoline refiners and

importers. The proposal would require all gasoline refiners and importers to produce gasoline that meets an average standard of 30 ppm sulfur at the refinery gate on an annual basis, beginning in 2004. These requirements would apply to all gasoline, reformulated as well as conventional. In 2004 and beyond this standard could be met through the use of credits generated as early as 2000 by refiners who substantially reduce sulfur levels from current (1997–1998) levels, under the provisions of the proposed sulfur ABT program discussed below in Section IV.C.3.c. Hence, the actual average sulfur levels for gasoline in use could be somewhat higher than 30 ppm. However, to ensure that sulfur levels are being reduced significantly (for the benefit of Tier 2 vehicles and to achieve the other emissions benefits of reducing gasoline sulfur), these in-use sulfur levels would be constrained by maximum corporate pool average standards of 120 ppm in 2004 and 90 ppm in 2005. These standards would represent the maximum allowable average sulfur levels for each refiner, measured across all refineries owned and operated by that refiner, rather than at each refinery. In 2006 and beyond, there would be no corporate pool average standard. Every refinery would have to meet the 30 ppm average refinery gate standard, although refiners could use any banked/purchased credits to meet this standard (as explained in the ABT discussion below). Thus, in 2006 and beyond, the majority of gasoline would average 30 ppm, although some individual refineries could average slightly more or less.

TABLE IV.C.-2.—PROPOSED GASOLINE SULFUR STANDARDS FOR REFINERS AND IMPORTERS [EXCLUDING SMALL REFINERS]

Compliance as of:	January 1, 2004	January 1, 2005	January 1, 2006+
Refinery Average, ppm	^a 30	^a 30	^a 30
Corporate Pool Average, ppm	120	90	not applicable
Per-Gallon Cap, ppm	^b 300	180	80

a This standard can be met through the use of credits as long as the applicable corporate pool average and per-gallon caps are not exceeded, as explained in the text.

b This initial per-gallon cap standard begins October 1, 2003.

To ensure that, even as average sulfur levels are reduced in 2004–2006, gasoline sulfur levels do not exceed a maximum level that we believe is particularly harmful to Tier 2 vehicles, we are also proposing “caps” on the sulfur content of every batch of gasoline produced or imported into the country. As shown in Table IV.C.-2, these caps

decline over time, ultimately resulting in a per-gallon limit of 80 ppm in 2006 and beyond. Since Tier 2 vehicles would be sold prior to the start of calendar year 2004, the actual date when the initial sulfur cap standard would take effect at the refinery is October 1, 2003. We are also proposing caps on the sulfur content of gasoline

sold at the retail level or otherwise distributed downstream of the refinery, as explained in Section VI.B.

For purposes of compliance, we propose that a joint venture, in which two or more refiners own and operate one or more refineries, be treated as separate refining corporations under the proposed gasoline sulfur requirements.

⁴⁸ Gasoline sold in California that meets California's standards would be exempt from

meeting the proposed standards, due to our belief

that California gasoline already meets or exceeds these requirements. See Section VI.B.

Hence, a refinery owned by a joint venture would be included in the corporate pool calculations of the joint venture, and would not be allowed to be included with other refineries owned by one of the parties to the joint venture in the corporate pool calculations for that party. Given the large number of joint ventures that have been announced recently in the oil industry, we believe this would be an equitable way to handle compliance for joint venture refineries. Furthermore, this approach would increase the number of companies that can generate and trade sulfur credits; a more limited number of multi-refinery companies would tend to bank and trade credits within rather than across corporations. We welcome comments on alternatives to this approach, such as requiring the majority owner in a joint venture to include the jointly owned refinery in his compliance calculations. If you recommend such an approach, please discuss how joint ventures that have (nearly) equal ownership among the parties should be treated for compliance and aggregation purposes.

i. Why Begin the Program In 2004?

The primary reason for our proposal to begin the gasoline sulfur standards in 2004 is that this is the first year that Tier 2 vehicles would be required to be sold, and these lower sulfur levels would be needed to avoid significant impairment of the Tier 2 emissions control technology. Furthermore, vehicles already in the fleet would benefit and we would like to maximize that benefit by starting the program as soon as is reasonable. States need the emission reductions that sulfur control would bring as soon as possible due to their SIP requirements in 2007 and 2010. This is reinforced by the fact that several states have already taken the initiative to develop state gasoline sulfur standards. In fact, since model year 2004 vehicles will likely be on the market in the fall of 2003, we are proposing to implement the caps on sulfur levels beginning October 1, 2003. This would help to ensure that sulfur levels are reduced coincidentally with the sale of Tier 2 vehicles, and would also ensure that sulfur levels throughout the gasoline distribution system have been reduced by the start of 2004.

We request comment on the feasibility of the compliance dates summarized in Table IV.C.-2. If these dates are not feasible, what date(s) would be more appropriate, given that Tier 2 vehicles will be introduced no later than model year 2004 and our conclusion that gasoline sulfur reductions must coincide with the introduction of these vehicles? For example, we request

comment on the implications of implementing the 30 ppm average standard beginning later than 2004, including potential implication on cost, air quality, and implementation of the proposed Tier 2 vehicle standards. What other factors should we consider if you believe that the proposed implementation dates are not feasible and should be postponed?

We also seek comment on the implications of implementing an average sulfur standard different than the proposed 30 ppm average standard, including levels higher and lower than 30 ppm. Specifically, commenters should address the feasibility of different standards they support, the time frame in which different average standards could be implemented (i.e., in 2003, 2004, or 2005), the potential air quality impacts of such standards, and how such standards would affect the implementation of the proposed Tier 2 vehicle standards.

ii. How Did We Arrive At the 80 ppm Cap and 30 ppm Average Standards?

We believe a 30 ppm averaging standard is important and necessary to enable the emission reductions needed from Tier 2 vehicles. The test data we have reviewed, referenced in previous sections of this notice and in the Draft RIA, show that even very low levels of sulfur have some negative impact on catalyst performance. Most of the data available to us were generated through testing with minimum sulfur levels near 30 ppm. We have used this data to conclude that sulfur levels need to be reduced, and to assess, as part of our analysis, the technical feasibility of the proposed Tier 2 vehicle standards. The non-linear relationship between sulfur level and emissions impact (the lower the sulfur level, the greater the incremental increase in emissions) suggests that emission reductions would be ensured by sulfur levels at or near 30 ppm. We believe that requiring the 30 ppm average standard would be necessary to ensure that vehicles regularly use gasoline containing very low amounts of sulfur, regardless of where the vehicles were driven, what time of year it was, or how gasoline production varied from batch-to-batch in a given refinery.

We also believe that an 80 ppm cap standard would be required to provide appropriate insurance for maintaining Tier 2 standards in use and to give automakers an indication of the maximum sulfur levels for which they would need to design their vehicles. The test data we have reviewed show that the greatest increase in emissions comes as the sulfur level is increased from the lowest levels (i.e., 30 ppm). At

higher sulfur levels (i.e., above 100 ppm), the catalyst performance is impaired to the extent that an additional increase in sulfur content has a smaller additional impact on emissions. Since the factors that influence sulfur sensitivity vary from vehicle to vehicle, different vehicles will experience different impacts from exposure to specific sulfur levels. None of the data that we have reviewed indicates that a vehicle can be designed to be completely insensitive to sulfur for all types of emissions. Furthermore, as discussed in Section IV.C.2., our concern that roughly half of the sulfur impact on the catalyst would be irreversible for Tier 2 vehicles (with other vehicles being negatively affected as well) provides additional arguments for trying to keep the sulfur cap as close to the average as possible. Hence, to ensure that Tier 2 vehicles maintain the designed emission performance over the life of the vehicle, we believe a cap on gasoline sulfur levels would be necessary, and that 80 ppm would be the appropriate level for this cap.

Setting a cap also would enhance enforcement of sulfur standards by setting a maximum level of sulfur that could be checked at all points in the gasoline distribution process. A sulfur cap significantly lower than 80 ppm could have the unintended consequence of forcing a sulfur average lower than the 30 ppm standard, increasing the overall costs of the program. The proposed level of 80 ppm sulfur for the cap reflects our balancing of several factors, including the potential air quality benefits, economic impacts, compliance flexibility, and the irreversibility of the effects of gasoline sulfur on vehicle emission controls.

As explained in Section IV.D. below, we believe that the combination of our proposed gasoline sulfur standards and the proposed Tier 2 standards would be cost-effective. This judgement about cost-effectiveness reflects what we believe would be an appropriate balance between the costs to be borne by the affected industries and the emissions reductions to be gained. Even though few refiners currently produce gasoline at or near these levels, as explained in Section IV.C.2 above there appear to be no significant obstacles to refiners achieving this level of sulfur control by 2004 (or 2006 if they were to take advantage of the sulfur ABT program). Unless a substantially higher average sulfur standard were set or a substantially smaller fraction of gasoline were affected by our regulations, refiners would have to make a significant investment in technology to desulfurize gasoline. Hence the cost to

refiners would not be substantially reduced if we selected a less stringent average standard. Furthermore, we believe that a lesser reduction in gasoline sulfur levels could require us to reduce the stringency of the proposed Tier 2 standards. A higher average sulfur level would require less stringent standards or more vehicle hardware costs; either would reduce the effectiveness of our proposed combined program.

At the same time, we recognize the need to provide some flexibilities to refiners in meeting our proposed standards, to ensure that the program is implemented in an orderly manner, without severe consequences in the initial months (for example, supply shortages or substantial spikes). Hence, we have proposed to allow less stringent caps in 2004 and 2005 (through 2007 under the small refiner provisions discussed below) to balance the needs of the technology with the regulatory burden, economic impact, and ability of the refining industry to reduce sulfur levels in this time frame. Given that Tier 2 vehicles would be phased in over several years and that the vast majority of gasoline would be capped at 80 ppm by 2006 (when 75% of new LDV, LDT1, and LDT2 sales would be required to meet the proposed Tier 2 standards), we believe that the potential damage to Tier 2 catalysts would be minimized. Furthermore, since the gasoline distribution system is fungible (i.e., gasoline from multiple refiners may be mixed together, and gasoline produced at one company's refinery may be sold at another company's retail station), any gasoline that approached the higher caps in 2004 and 2005 would be highly likely to be diluted by lower sulfur gasoline, further limiting the potential negative impact on Tier 2 vehicles.

We have also proposed to permit compliance with the 30 ppm refinery average with the use of credits indefinitely, not just in the years during which the corporate average is reduced, as long as the applicable per-gallon caps are not exceeded. We would like comments on whether this provision should end, and if so, what date would be appropriate to require every refinery to meet the 30 ppm standard with actual production. We also encourage comments on whether corporate averaging (aggregation of refineries owned by a single entity) should be allowed for compliance with the 30 ppm standard, in 2004 and 2005 (in addition to corporate averaging to the pool standard) and/or beginning in 2006.

In light of our technical conclusions about the need for these standards, and

our concerns about the irreversibility of the sulfur effect, we believe the 30 ppm average/80 ppm cap is the appropriate sulfur level to enable vehicles to meet the proposed Tier 2 standards and to maximize the emissions reductions to be achieved from this program in a cost-effective way. We welcome comments on these conclusions. We are also interested in any information on the reversibility of the sulfur impact on NLEV and Tier 2 catalysts that may supplement our understanding of how reversibility may differ with exposure to different sulfur levels and how this difference would impact our selection of the 30/80 standards. We also solicit information about what, if any engine or catalyst design modifications could minimize the irreversibility of the sulfur impact and about how compliance with the SFTP standards could impact irreversibility (for either NLEV or Tier 2 vehicles).

iii. *Should a Near-Zero Gasoline Sulfur Standard Be Considered?*

The auto industry, represented by the Alliance of Automobile Manufacturers, have supported a gasoline sulfur control program that would require 30 ppm gasoline in 2004 with a further reduction to "near-zero" levels (less than 5 ppm) by 2007. They believe that near-zero sulfur levels would enable the emission control technology that would ultimately be necessary to meet standards similar to those we are proposing today. They also believe that very low sulfur gasoline would significantly increase the emission reductions of the program as compared to a 30 ppm sulfur program.

We are also aware of concerns that advanced emission control and fuel efficient technologies, such as gasoline direct injection engines and automotive fuel cells, may require zero or near-zero sulfur levels to achieve Tier 2 emission levels over their full useful life (or in some cases, even to operate for a significant length of time). At the same time, we're aware that there may be technological solutions to these problems that may allow these technologies to operate on gasoline averaging 30 ppm sulfur. For example, it may be possible to regenerate (remove the sulfur from) the emission control technologies used by gasoline direct injection engines on an ongoing basis. Similarly, it may be possible to prevent sulfur from entering a fuel cell through the use of a sulfur "guard" made, for example, of zinc oxide, that might need to be replaced periodically.

We believe that our proposed Tier 2 standards could be met with conventional technology if gasoline averaging 30 ppm is available.

Nonetheless, for the reasons put forward by the auto industry and others, we also believe that it may be desirable in the long term for all gasoline in the U.S. to average substantially below 30 ppm sulfur. We encourage you to comment on the question of requiring gasoline sulfur levels under 5 ppm in the 2007 and later time frame. If you are commenting on this issue, we encourage you to take a broad view and to discuss all of the following questions in your comments:

- What technological options would be opened to manufacturers of vehicles and emission control hardware if near-zero sulfur fuel were available?

- What additional air quality benefits would be achieved?

- What changes in vehicle engines and emission control technology would be needed to achieve these emission benefits, absent reductions in gasoline sulfur levels beyond our proposed 30 ppm standard? What would these changes cost?

- What is the maximum sulfur level that advanced technologies, including gasoline direct injection and automotive fuel cells, could be designed to withstand if they are to be commercialized under the proposed Tier 2 standards? In what time frame might substantial commercialization of these technologies occur?

- How feasible is production of near-zero sulfur gasoline for the refining industry? What technologies would be required? How would this vary from refinery to refinery? What additional costs, beyond those expected for a 30 ppm sulfur program, would be incurred? How would the timing of a near-zero sulfur requirement affect refining costs?

- Would equipment used to make 30 ppm have to be modified or replaced to make near-zero sulfur gasoline? If so, how would this affect the time frame in which a near-zero sulfur level in gasoline could be achieved? Would the time frame for achieving these levels be different if refiners were not required to meet a 30 ppm standard? Is there another sulfur concentration that could be easily achieved as an intermediate level before achieving near-zero levels?

- What other issues should we consider in evaluation of further reductions in gasoline sulfur levels?

iv. *Why Are We Proposing Less Stringent Standards for 2004 and 2005?*

We are proposing to permit corporate average sulfur levels to be somewhat higher than 30 ppm, and maximum sulfur levels to be higher than 80 ppm, under the ABT program in 2004 and 2005. This proposal is meant to provide greater flexibility for refiners to meet

our ultimate goal of the 30 ppm standard in an orderly fashion, while limiting the negative environmental consequences. The temporary nature of the ABT program would ensure that any negative consequences for Tier 2 vehicles of these higher sulfur levels (120 ppm average in 2004, 90 ppm in 2005) would be minimal. By the time that the majority of new vehicles sales would be required to meet the Tier 2 standards (2006 and beyond), average sulfur levels in gasoline would meet the 30 ppm annual average standard.

We are interested in comment on the corporate pool average values, and their associated caps. A higher pool average would obviously ease implementation (e.g., 150 ppm average with an appropriate cap in 2004, for example), but we have not proposed a higher average because of our concerns that higher in-use sulfur levels after 2004 are undesirable for emissions from Tier 2 vehicles. We request that commenters supporting higher corporate pool average values discuss how such higher values would affect in-use emission levels of Tier 2 vehicles, as well as NLEV and Tier 1 vehicles.

We also ask for comment on an alternative approach that would implement the corporate average requirement for 2004 (120 ppm) but not require compliance with the 30 ppm standard (with or without credit use) until 2005. The 120 ppm corporate pool average would continue in 2005 and the 90 ppm corporate pool average would be implemented in 2006, with the requirement to meet the 30 ppm standard (with or without credits) beginning in 2005 and extending indefinitely, consistent with the proposed program.

Finally, we request comment on whether refiners should be allowed to comply with the corporate average standards through the use of sulfur credits generated under the ABT program (within the limits of the proposed caps). This would likely render the refinery-specific standards in 2004 and 2005 unnecessary, and thus refiners would only have to comply with the per-gallon caps and corporate averages in 2004 and 2005. However, in 2006 and beyond refiners would have to meet the 30 ppm average at every refinery (with limited use of sulfur credits, to the extent that the 80 ppm cap permits).

We have proposed per-gallon caps of 300 ppm in 2004 and 180 ppm in 2005 at the refinery gate, with slightly higher caps imposed downstream (as explained in Section VI.B below). We believe that downstream caps would be necessary to ensure compliance and protect Tier 2

vehicles. At the same time, we believe caps at the refinery gate would be necessary to guarantee that the environmental goals of this program were met; the corporate and refinery averages alone wouldn't provide the full emissions reductions and environmental benefits we have estimated because, by themselves, they could allow gasoline with high sulfur levels in the system as long as the refiner offset any such high sulfur batches with very low sulfur gasoline. However, there are some arguments for eliminating the per-gallon standard at the refinery gate and simply enforcing a per-gallon cap at the retail level (or some intermediate point downstream). This approach would give refiners and blenders greater flexibility in blending occasional batches of gasoline that exceed the proposed cap standards. These refiners/blenders could sell and transport these high sulfur batches to another party who would blend down the sulfur level to make gasoline meeting the downstream caps. One shortcoming of such an approach (removing the per-gallon cap at the refinery) is that not all gasoline passes through multiple parties before ending up at the retail level; some refiners ship part or all of their production directly from refinery to retail outlet. We welcome comment on whether caps at both the refinery gate and downstream are appropriate. We also encourage your input on whether the caps we have proposed to coincide with the corporate average standards are appropriate. Keep in mind that we need some limitation on sulfur levels to protect the first Tier 2 vehicles that would begin entering the marketplace as early as the fall of 2003.

b. Proposed Standards for Small Refiners. As explained in the regulatory flexibility analysis discussion in Section VIII.B. of this document, we have considered the impacts of these proposed regulations on small businesses. As part of this process, we convened a Small Business Advocacy Review Panel for this proposed rulemaking, as required under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Panel was charged with reporting on the comments of small business representatives regarding the likely implications of possible control programs, and to make findings on a number of issues, including:

- A description and estimate of the number of small entities to which the proposed rule would apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule;

- An identification of other relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and

- A description of any significant alternatives to the proposed rule that accomplish the objectives of the proposal and that may minimize any significant economic impact of the proposed rule on small entities.

The final report of the Panel is available in the docket. The Panel concluded that small refiners were the group most likely to be negatively impacted by the proposed program. (The Panel noted that small gasoline marketers would also have to comply with some portions of a gasoline sulfur program, but did not recommend any regulatory relief for this group of small businesses.) Many of the small refiners the Panel met with indicated their belief that their businesses may close if relief were not considered due to the substantial capital and other costs required to reduce sulfur levels to the 30/80 standard. The Panel recommended that EPA solicit comments on a number of options to provide relief to small refiners, which include some or all of these provisions:

- Providing small refiners a four-to six-year period during which less stringent gasoline sulfur requirements would apply; comment was also recommended on extending this period for up to a total of 10 years.

- Basing each small refinery's gasoline sulfur limit on its individual average sulfur level based on the most recent report(s) to EPA; and

- Granting temporary hardship relief on a case-by-case basis, following the four-to six-year period of relief common to all small refiners, based on a showing of economic need.

The Panel stated its belief that additional time would allow sulfur-reduction technologies to be proven out by larger refiners, thereby reducing the risks to be incurred by small refiners who choose to incorporate these technologies. The added time would likely allow for costs of these desulfurization units to drop, thereby limiting the economic consequences for small refiners. Nationally, giving small refiners more time to comply would help ensure that cross-industry engineering and construction resources would be available. Finally, extending the compliance deadlines would provide small refiners with additional time to raise capital for infrastructure changes.

i. What Standards Would Small Refiners Have to Meet Under Today's Proposal?

Upon evaluating the impacts of our proposed gasoline sulfur requirements on small refiners and careful review of the Panel's recommendations, we have determined that regulatory relief in the form of delayed compliance dates is appropriate to allow small refiners to comply without disproportionate burdens. We propose that, for a period of four years after other refiners must start meeting the standards proposed in Table IV.C-2, refiners meeting clearly defined company size criteria be allowed to comply with somewhat less stringent requirements than those just described for refiners and gasoline importers. We propose to define a small refiner as any company employing no more than 1,500 employees throughout the corporation, including any subsidiaries, regardless of the number of individual gasoline-producing refineries owned by the company or the number of employees at any one refinery. This number is based on the Small Business Administration definition of a small refiner for the purposes of regulation.⁴⁹ The proposed annual average small refiner standards beginning with 2004 are shown in Table IV.C-3 below, although the cap standards begin October 1, 2003.

TABLE IV.C-3.—PROPOSED TEMPORARY GASOLINE SULFUR REQUIREMENTS FOR SMALL REFINERS IN 2004-2007

Refinery baseline sulfur level (ppm)	Temporary sulfur standards (ppm)
0 to 30 ..	Average: 30. Cap: 80. ^a
31 to 80	Average: no requirement. Cap: 80. ^a
81 to 200.	Average: baseline level. Cap: Factor of 2 above the baseline. ^a
201 and above.	Average: 200 ppm minimum, or 50% of baseline, whichever is higher, but in no event greater than 300 ppm. Cap: Factor of 1.5 above baseline level. ^a

^aThe cap standard takes effect at the refinery gate October 1, 2003.

We also propose to apply these provisions to any foreign refiner that can establish that they meet this same definition of small. Since few if any foreign refiners send all of their gasoline production to the U.S., allowing eligible

small foreign refiners to meet these less restrictive standards, even on a temporary basis, would be a less restrictive requirement than it will be for small domestic gasoline producers since they may be able to send lower sulfur gasoline to the U.S. without having to incur capital expenses. Furthermore, in many cases foreign refiners are not subject to the same stringent permitting and other regulatory requirements that domestic refiners face. At the same time, we believe many foreign refiners will be installing gasoline desulfurization equipment because of the various international requirements that have been proposed and/or finalized (for example, in Europe, Canada, Japan) that require gasoline sulfur levels to be reduced to levels similar to our proposed standards and thus these companies will not avoid all of these costs. In addition, in most cases we expect importers to be the party responsible for the sulfur level of imported gasoline, and importers are not eligible for the less stringent standards applied to small refiners. Hence, the number of foreign refiners who could benefit (financially and otherwise) from gaining small refiner status is likely to be very small. However, we welcome comments on the competitive and other marketplace implications of this proposal.

We believe that these proposed small refiner standards are reasonable and that they would not conflict with our overall goals of reducing gasoline sulfur levels nationwide as soon as possible and of reducing gasoline sulfur levels sufficiently to enable and protect the emissions performance of Tier 2 vehicles. Our conclusions are based in part on the fact that only a very small volume of gasoline will be eligible for these lesser standards. We have estimated that small refiners produce approximately 2.5 percent of all gasoline in the U.S. Furthermore, of the 17 refineries that we have identified as meeting SBA's definition of small business, nine already have gasoline sulfur levels less than 90 ppm. Hence, only a very small fraction of the gasoline sold in the U.S. would take advantage of the higher small refiner standards through 2007. By the time that a large number of Tier 2 vehicles could have been impacted by residing in or traveling to areas where higher sulfur fuel is sold, the temporary exemptions for small refiners would have expired. Furthermore, in most cases, gasoline produced by small refiners is mixed with substantial amounts of other gasoline prior to retail distribution (due

to the functioning of the gasoline distribution system), likely resulting in only marginal increases in overall sulfur levels. Thus, the sulfur level of gasoline actually used by Tier 2 vehicles should generally be much lower than that produced by individual small refineries who receive unique compliance standards through 2007.

As explained above, we are proposing that compliance under the proposed standards be based on a refiner's being able to show that it meets specific criteria. If a refiner were able to qualify as a small refiner under our definition, it would need to then establish a sulfur baseline for each participating refinery. For small refiners, compliance with the proposed sulfur regulations would be determined on the basis of the sulfur baseline for each refinery owned by that company. The following sections explain these proposed requirements in more detail, to supplement the information be presented above. We also explain how small refiners could obtain an additional two-year exemption upon establishing a hardship case, as well as how small foreign refiners could establish eligibility for compliance under the small refiner provisions.

ii. *Application for Small Refiner Status.*

We are proposing that refiners seeking small refiner status under our gasoline sulfur program would have to apply to us in writing no later than June 1, 2002, requesting this status. In this application, the refiner must demonstrate that as of January 1, 1999, the business and any subsidiaries, including all refining, distribution, and marketing activities, as well as any other activities worldwide, employed 1,500 or fewer employees. We are proposing that in the case of refineries owned by joint ventures, the total employment of both (all) companies would be considered in determining whether the 1,500 employee limit is reached. If a refiner that is not small as of January 1, 1999 subsequently sells part of its business and as a result has fewer than 1500 employees, it would not be eligible for a small refiner status. These provisions would provide stability to the regulated and regulatory parties and ensure that no "gaming" of the program occurs. However, we are also proposing that any new refinery built between January 1, 1999 and January 1, 2001, or a refinery that was not operational as of January 1, 1999, owned by a refiner that meets our proposed definition, could apply for small refiner status no later than June 1, 2002. In this case, we would consider carefully the history of the refinery and

⁴⁹ SBA uses a different definition of small refiner for the purposes of federal procurements of petroleum products, and EPA in the past has used criteria based on the processing capacity of the individual refinery and of all refineries owned by one company.

the company in determining whether it is appropriate to grant this refiner small refiner status.

We are also proposing that if a refiner with approved small refiner status later exceeds the 1,500 employee threshold without merger or acquisition, its refineries could keep their individual refinery standards. This is to avoid stifling normal company growth and is subject to our finding that the refiner did not apply for and receive the small refiner status in bad faith. An example of an inappropriate application for small refiner status would be a refiner that temporarily reduced its workforce from 1,600 employees to 1,495 employees prior to January 1, 1999, and then rehired employees after the cutoff date. This would be a bad faith attempt to avoid the intent of the rule. We are requesting comment on this provision.

At any time after June 1, 2002, a refiner with approved small refiner status could elect to cease complying with the small refiner standards and, in the next calendar year, begin complying with the standards specified in Table IV.C-2 and related provisions. However, this decision would apply to all refineries owned by that refiner and once a refiner dropped its small refiner status, it would not be eligible to be reinstated as a small refiner at some later date.

iii. *Application for a Small Refiner Sulfur Baseline.*

A qualifying small refiner could apply for an individual sulfur baseline by June 1, 2002 for any refinery owned by the company by providing a calculation of its sulfur baseline using its average gasoline sulfur level based on 1997 and 1998 production data, and the average volume of gasoline produced in these two years. The proposed regulations specify the information to be submitted to support the baseline application. The baseline calculations should include any oxygen added to the gasoline at the refinery. This application would be submitted at the same time that the refiner applied for small business status; confirmation of small business status would not be required to apply to EPA for an individual sulfur baseline. If the baseline were approved, we would assign standards to each of the company's refineries in accordance with Table IV.C.-2.

Blenders would not be eligible for the small refiner individual baselines and standards because they would not have the burden of capital costs to install desulfurization equipment, which is the primary reason for allowing small refineries to have a relaxed compliance schedule.

iv. *Volume Limitation on Use of a Small Refinery Standard.*

We are proposing that the volume of gasoline subject to the small refinery's individual standards would be limited to the volume of gasoline the refinery produced from crude oil, excluding the volume of gasoline produced using blendstocks produced at another refinery.⁵⁰

Under this approach, the baseline volume for a small refinery would reflect only the volume of gasoline produced from crude oil during the baseline years. In addition, use of the refinery's individual baseline sulfur level during each calendar year averaging period (beginning with 2004) would be limited to the volume of gasoline that is the lesser of: (1) 105% of the baseline volume, or (2) the volume of gasoline produced during the year from crude oil. Any volume of gasoline produced during an averaging period in excess of this limitation would be subject to the standards applicable to refineries not subject to a small refiner standard. In this case, the small refiner's annual average standard would be adjusted based on the excess volume in a manner similar to the compliance baseline equation for conventional gasoline under Section 80.101(f) of Part 40 of the Code of Federal Regulations. However, the small refiner's per-gallon cap standard would not be adjusted.

This limitation would assure that small refineries receive relief only for gasoline produced from crude oil, the portion of the refinery operation requiring capital investment to meet lower sulfur standards. We are requesting comment on this provision and whether an alternative approach may be more appropriate for the stated purpose.

v. *Hardship Extensions Beyond 2007 for Small Refiners.*

Beginning January 1, 2008, all small companies' refineries would have to meet the permanent national sulfur standard of 30 ppm on average and the 80 ppm cap, except small refineries that apply for and receive a hardship extension. A hardship extension would provide the small refiner an additional two years to comply with these national standards. A hardship extension would need to be requested in writing and would specify the factors that qualify the refiner for such an extension. Factors considered for a hardship extension could include, but would not be limited to, the refiner's financial

position; its efforts to procure necessary equipment and to obtain design and engineering services and construction contractors; the availability of desulfurization equipment, and any other relevant factors.

By January 1, 2010 all refineries would be required to meet the permanent national average standard and cap. We are requesting comment on the proposed hardship extension, including the factors to be considered in petitions for extension, and the proposed time periods.

vi. *What Alternative Provisions for Small Refiners Are Possible?*

We have proposed one type of program to address the needs of small refineries. We solicit comment on other options so that we can consider these options as we finalize this rule. We encourage comments. We request comment on a range of alternatives, including those listed below, which could be considered when developing unique regulatory requirements for small refineries. We specifically request that the comments address not only the economic but also the environmental implications of the alternative, relative to the program we've proposed.

- Are there alternative or additional criteria that could/should be used to define a small refiner, such as the volume of crude oil processed or the volume of gasoline produced (since the gasoline sulfur standard applies specifically to gasoline)? Other criteria may also be acceptable, such as a different employee number for qualification as a small entity, or basing the count on employees employed in gasoline production only. We welcome your recommendations. Our desire is to limit the number of companies meeting the small refiner definition in order to provide regulatory relief only to those companies that have the economic concerns unique to small businesses. If you recommend criteria other than number of employees, please comment on how those criteria can be shown to limit the number of refineries that will be eligible for the proposed relief.

- Are the caps and averages of the proposed interim standards for small refineries (see Table IV.C.-3) appropriate for the corresponding individual sulfur baseline levels?

- What is an appropriate and sufficient time period for the proposed small refiner interim standards? Would most qualifying small refineries be able to meet the 30/80 standards within four years (six if a hardship extension is granted, which is dependent on the case made by the individual refiner), as proposed? The Panel report suggested that a period of six to ten years could

⁵⁰ In addition to gasoline produced from crude oil, a small refinery's baseline volume would include gasoline produced from purchased blendstocks where the blendstocks are substantially transformed using a refinery processing unit.

be desirable to provide sufficient time for small refiners to comply with the proposed standards. What are the arguments for granting more than four years of additional time and what are the environmental implications (and implications for Tier 2 vehicles) of such an extension?

- Should small refineries of multi-refinery companies (companies too large to meet the proposed small refiner criteria) be eligible for small refiner interim standards? Should refineries not producing gasoline as a major product (for example, refineries engaged primarily in the production of lubricants where gasoline is a small volume by-product) be eligible for small refiner interim standards regardless of corporate size/employment?

- If a small refiner operates more than one refinery (while still meeting our proposed small refiner criteria), should that refiner be permitted to aggregate the sulfur baselines and comply with the small refiner standards applicable to that aggregate baseline? Under the sulfur ABT program described below, we are proposing to require refiners to aggregate data from all of their refineries when determining compliance with the 2004 and 2005 corporate average standards (Table IV.C.-2) (but not the refinery gate standards, although we seek comment on that alternative).

- Rather than providing unique standards for qualifying small refiners, would the need for separate small refiner provisions be addressed if we were to adopt a regional sulfur program? In Section IV.C.1. above, we explained our concerns that a regional sulfur program would not achieve the same emission reductions we project for our Tier 2/gasoline sulfur program. However, some have suggested to us that a regional program would address the need for small refiner provisions since the majority of small refiners are thought to sell gasoline in the West. We know of several refiners that appear to meet our proposed criteria for being small that sell at least some of their gasoline production in the eastern U.S. (as defined by the oil industry's proposed program) and thus a regional program would not cover all small refiners. We encourage comments on this alternative, particularly from refiners who could be impacted by such a decision.

- Would a more general hardship provision that would be based on a showing of substantial economic hardship, such as discussed in Section IV.C.4.c., provide sufficient compliance flexibility to address the needs of small refiners?

4. Compliance Flexibilities

In addition to the basic standards applicable to refiners that were explained above, we are proposing two additional programs that will provide flexibility for refiners when complying with the proposed standards. The first is the sulfur ABT program mentioned previously. The second is a program to streamline the construction permitting process so that refiners can make the required process modifications by 2004.

a. *Sulfur Averaging, Banking, and Trading (ABT) Program.* We are proposing that any refiner or importer be allowed to generate, bank, and trade sulfur credits. A sulfur ABT program would accelerate the reduction of sulfur in gasoline and provide refiners with additional flexibility in achieving compliance with the 30 ppm standard in 2004 and beyond. The following paragraphs provide additional information about our proposed sulfur ABT program, to supplement that presented in Section IV.C.-3.a above. We encourage comments on the design elements we have proposed for the sulfur ABT program. If you believe alternative approaches would make the program more useful to the refining industry, please share your specific recommendations with us.

i. *Why Are We Proposing a Sulfur Averaging, Banking, and Trading Program?*

A sulfur ABT program, if properly implemented, would provide the opportunity for a win for both the refining industry and the environment. The flexibility provided by an ABT program could provide refiners more lead time to bring all of their refineries into compliance with the 30 ppm standard, by allowing them to use credits generated at one refinery to delay having to desulfurize gasoline from another refinery. ABT would provide the opportunity for reduced costs by allowing the industry the flexibility to average sulfur levels among different refineries, between companies, and across time. Since, under banking, early reductions have a value during program implementation, ABT provides an incentive for technological innovation and the early implementation of refining technology.

The ABT program could provide meaningful early benefits for the environment because it would allow the Tier 2 standards to be implemented earlier than might otherwise have been possible, and because it would provide direct environmental benefits. The first direct benefit relates to atmospheric sulfur loads. This benefit is largely independent of when credits are

generated and used. However, atmospheric deposition and transformation rates of sulfur compounds tend to vary geographically and seasonally and thus we must consider whether a broad averaging program would have different pollutant effects when compared to a more constrained averaging program or a program without averaging. Any potential negative effects of a broad ABT program should be mitigated by the geographic distribution of refineries, the widespread distribution pipelines, and the fungible nature of gasoline. All of these factors, taken together, lead us to believe that any negative effect on atmospheric sulfur levels from ABT (relative to a single 30 ppm average/80 ppm cap in 2004) would be negligible. It should be noted that this situation is further moderated by the pool averages and caps proposed for 2004 and 2005, since these averages and caps would reduce actual gasoline sulfur levels as the ABT program phases in.

Another environmental benefit is related to the effect of gasoline sulfur on catalyst performance, as discussed in the draft RIA. Since catalyst performance depends in part on gasoline sulfur levels, we must consider whether the emissions benefits (measured in g/mi-per-ppm) of early sulfur reductions when credits are generated are essentially the same as the g/mi-per-ppm benefits when the credits are used. The effect of sulfur on emissions from Tier 0 and Tier 1 vehicles, which will dominate the fleet in 2000–2005, is approximately the same when sulfur levels increase from 30 to 150 ppm as it is when sulfur levels increase from 150 ppm to 330 ppm. In other words, for each ppm increase in sulfur levels, approximately the same effect on emissions results regardless of whether the increase is from low levels (e.g., from 30 ppm up to 150 ppm) or from higher levels (e.g., from 150 ppm up to current average levels). Therefore, the emissions benefits from credits generated before 2004 would essentially offset the emissions effects of those credits being used in 2004 and beyond, especially since corporate pool average sulfur levels could not exceed 120 ppm in 2004 and 90 ppm in 2005, and sulfur levels will be capped at 80 ppm in 2006 and beyond.

Nonetheless, there remains concern about the sensitivity of later models (NLEV and Tier 2) to sulfur and about the reversibility of the effect of higher sulfur levels on catalyst efficiency. More explicitly, the relatively few Tier 2 vehicles that would see somewhat higher sulfur levels than 30 ppm in 2004 and 2005 (about three-quarters of

a model year of production) would not be able to fully recover the loss in emissions performance due to the higher sulfur levels. Hence, the corporate averages and caps would be necessary in these interim years. In 2006 and beyond, the 80 ppm cap and the 30 ppm average refinery standard, even with the ongoing use of credits to comply with the 30 ppm standard, would keep in-use sulfur levels very close to 30 ppm. Thus, Tier 2 vehicles sold in 2006 and beyond would receive appropriate protection from gasoline sulfur.

ABT programs must be designed and implemented carefully to be certain that they are sensitive to equity and competitive issues in the industry and do not create the potential for inadvertent emission increases. In the context of gasoline sulfur control, concerns about different baseline sulfur levels and different technological capabilities among refiners must be considered. Even with the proposed lead time, some refiners would find it easier to achieve reductions than would others. This is due to a number of factors, including refinery configuration, product mix (gasoline versus distillates), crude oil sulfur levels, and the ability to generate capital to fund the investment. At the same time the program must be designed to eliminate the possibility of windfall credits and to be sure that the environmental benefits associated with early sulfur reductions offset the potential forgone benefits when the credits are used.

The program we are proposing today attempts to strike a balance among all of these factors. Some of the elements and design features (such as the eligibility trigger and the baseline requirement) were included to address concerns such as timing, disparate capabilities among refineries, and the potential for excessive ("windfall") credits. We are seeking comment on options for dealing with all of the issues we have identified.

The ABT program is voluntary. No refiner or importer qualifying for credits is required to generate them, use them, or make them available to others (except as discussed in Section IV.C.4.a.vi. below). The process for establishing a sulfur baseline and generating and using credits is outlined below.

ii. *How Would Refiners Establish a Sulfur Baseline?*

To establish a sulfur baseline against which credits would be calculated, we propose that by July 1, 2000, each refiner or importer that wants to generate credits submit two pieces of information to the Agency. One would be the volume-weighted average sulfur content for conventional gasoline (CG)

for each refinery (or imported by that importer) for 1997 and 1998. The second would be the annual average volume of CG produced by that refinery (or imported by the importer) in those years.^{51 52}

Since we expect summer RFG sulfur levels to decrease in 2000 to approximately 150 ppm (due to the actions refiners will take to meet the Phase II NO_x standards for RFG), we are proposing to set the individual refinery sulfur baseline for summer RFG at 150 ppm, regardless of volume produced in 1997 and 1998. Winter RFG production would be assigned the same sulfur baseline as the refinery's conventional gasoline, without regard to the volume of winter RFG produced in 1997–98. Hence, no reporting of RFG sulfur levels or volumes would be required in setting a sulfur baseline. We encourage comments on the use of different sulfur baselines for summer and winter RFG, particularly regarding whether this could create a disincentive to produce RFG in the summer months. We do not want to jeopardize our RFG program, but at the same time, we want sulfur credits to reflect actions taken by refiners above and beyond their current operations and/or regulatory obligations.

Conventional gasoline produced in 2000 and beyond that exceeded 105% of the CG baseline volume produced at that refinery would be assigned a sulfur baseline (from which credits would be generated) of 150 ppm. This provision is intended to prevent increases in average sulfur levels resulting from increases in CG production. A refiner/importer of conventional gasoline to which oxygenate is added downstream during 1997–1998 could include the downstream oxygenate volume in that refinery's CG baseline, if the refiner can substantiate that oxygenate was added to that gasoline.

A refinery/importer that did not produce/import gasoline during 1997–1998 would be assigned a baseline of 150 ppm each for CG and RFG for the purposes of sulfur credit generation in 2000 and beyond. This provision would also apply to blenders of natural

gasoline, butane, or similar non-oxygenated blending components. Such parties would be considered refiners and would need to meet all requirements, such as analyzing each batch of the blending component for sulfur prior to its addition to gasoline. Credits would be based only on the volume of the blending components. We encourage comments on alternative provisions for establishing baselines for refiners/importers that could not establish a 1997–98 sulfur baseline as described above. In particular would 150 ppm be appropriate, or would a greater or lesser sulfur content be most equitable and most environmentally neutral? Should this baseline be tied in some way to the trigger for credit generation in (as discussed below) 2000–2003?

We request comment on several aspects of this baseline provision. The 1997–1998 years for the baseline represent the latest available data and thus best reflects the present state of each refinery's gasoline sulfur levels. However, we already have established baseline sulfur levels for 1990 for most refineries. Except for changes related to RFG, average gasoline sulfur levels have changed little since 1990. Hence, we request comment on whether that 1990 baseline would be a suitable substitute. Alternately, we request comment on whether 1997 and 1998 are the appropriate years to average when establishing a sulfur baseline, given that mandatory use of the Complex Model starting in 1998 could have led to changes in sulfur levels between 1997 and 1998. Since our purpose in proposing to establish sulfur baselines is to try to capture current sulfur levels (within a reasonable date of the 2000 start date for credits to be generated), the sulfur baseline could be based on a single year's data (for example, 1998) rather than a two-year average. We proposed a two-year average to try to capture and accommodate operational fluctuations and changes. However, a single year's data may adequately capture current sulfur levels.

We are not proposing a formal baseline review and/or approval process since the proposal envisions a self-certifying process. Refiners would submit their 1997 and 1998 sulfur baseline data for each refinery to us, and then would generate credits from that baseline in 2000–2003. If we determined, through a refinery audit or other action, that the sulfur baseline was calculated with incorrect data, we would establish a new sulfur baseline and the refinery would subject to that baseline, even if it meant recalculating

⁵¹ Since participation in the sulfur ABT program is voluntary, refiners opting not to generate or use sulfur credits do not have to establish a sulfur baseline for this program.

⁵² We believe that variations in specific gravity, which could affect the sulfur content of gasoline as determined on a mass basis, will average out over the year and need not be included in the calculations. However, we request comment on whether specific gravity should be considered in the calculation of sulfur baselines (including whether such data exists for 1997–98) and subsequently, in calculating credits generated relative to this baseline.

the number of credits generated in subsequent years. We have used this baseline review process in other mobile source programs and believe it works well, but we request comment this approach.

We considered the possibility that, since refiners report annual production information to EPA, we could issue baselines for each refinery rather than refiners having to submit them to us. However, we do not think this is a possible solution because many refiners comply with our RFG and CG requirements by aggregating the data from all of their refineries. Thus, the data we currently receive from refiners would not allow us to establish an individual baseline for every refinery in the U.S. (unless we went back to 1990 data). However, we would like comment on whether a more formal sulfur baseline approval process (say, a letter from the Agency or a date by which approval can be assumed unless the refiner hears otherwise) would be desirable. Keep in mind that even with a more formal baseline approval process, the baseline could be changed at a later date if we found, during an audit of refinery records, errors in compliance with the proposed baseline requirements. Hence, any up-front approval would only provide certainty that, based on the data reported to us, we believe the refiner had correctly applied the mathematical equations proposed today for establishing a sulfur baseline.

Some have raised the concern that if imported gasoline were allowed to be used for credit generation, as we propose today, foreign refiners might be able to gain an unfair advantage. For example, it is possible that foreign refiners could simply re-blend their gasoline (without installing new capital equipment) and send their lowest-sulfur refinery streams to the U.S. at a lower cost than gasoline produced by domestic refiners that had to reduce overall sulfur levels through desulfurization. Since importers, not foreign refiners, would be the parties assigned a sulfur baseline and eligible for generating credits, we do not believe foreign refiners would have a strong incentive to send lower sulfur gasolines to the U.S. We believe that the benefits of allowing importers to participate in the sulfur ABT program (more players in the credit trading field, more chance for early reductions in gasoline sulfur levels) outweigh the potential detriments. However, we encourage comment on the implications of the decision to allow imported gasoline to be used for credit generation.

Oxygenate blenders would not be able to participate in this proposed credit program because they would not be subject to the sulfur standard. Special provisions would exempt them from having to measure the sulfur content of the oxygenate they blend and from the recordkeeping and reporting requirements of the sulfur program, other than the requirements that apply to all parties that handle gasoline and gasoline blendstocks downstream of the refinery.

iii. *How Would Refiners Generate Credits?*

During the period 2000–2003, credits could be generated annually by any refinery that produced conventional gasoline averaging 150 ppm sulfur or less on an annual, volume-weighted basis. Credits would be calculated based on the amount of reduction from the refinery's CG sulfur baseline.⁵³ Credits could also be generated from winter RFG based on reductions from the sulfur baseline, if the winter RFG sulfur level averaged 150 ppm or less (on a seasonal volume-weighted basis). Similarly, summer RFG would need to have a seasonal volume-weighted average sulfur level below 150 ppm to be eligible for credit generation, although credits would only be created based on the difference between 150 ppm and the summer RFG sulfur average. Thus, credits would need to be generated separately for conventional gasoline and RFG. Conventional gasoline produced in excess of 105% of the baseline volume could only generate credits for sulfur reductions below 150 ppm, not for the cumulative reduction from the baseline sulfur level. Winter RFG would not be subject to any volume limitations, and thus refineries could generate credits for any volume of winter RFG that contains 150 ppm sulfur or less.

For example, if in 2002 a refinery reduced its annual average sulfur level for conventional gasoline from a baseline of 450 ppm to 150 ppm, its sulfur credits would be determined based on the difference in annual sulfur level (450–150=300 ppm) multiplied by the volume of conventional gasoline produced (up to 105% of the baseline CG volume). If this refinery produced more CG than 105% of the baseline volume, it would only generate credits from that incremental volume if the incremental gasoline were below 150 ppm. (For example, if the refinery's 2002 average CG sulfur level were 100 ppm, it would get 150–100=50 ppm sulfur credits on any volume in excess

of 105% of its baseline CG volume, as well as 450–100=350 ppm for the baseline volume up to 105%.)

If this same refinery also produced RFG with an annual average sulfur content of 90 ppm in 2002, it could also receive sulfur credits calculated based on the difference between 150 ppm and 90 ppm (60 ppm) times the volume of summer RFG produced plus 360 ppm (450–90) times the volume of winter RFG produced. A refinery with a sulfur baseline lower than 150 ppm sulfur would only generate credits relative to reductions from its baseline, for either CG or winter RFG. Credits from summer RFG would be based on reductions from 150 ppm.

Several states have implemented or are considering gasoline sulfur control programs. To avoid double-counting of emission benefits, lower sulfur gasoline produced to comply with these state programs would not be eligible for early banking credits under this program.

In 2004 and beyond we propose that credits could only be generated for actual annual sulfur averages below the 30 ppm standard (combining conventional and reformulated gasolines), and only for the difference between the standard and the actual annual sulfur average. (For example, a refinery producing gasoline in 2004 that averaged 25 ppm could generate 30–25=5 ppm, while a refinery producing gasoline that averaged 40 ppm would not be eligible for any credits.)

We encourage comments on this credit generation concept. In particular, would these formulas permit sufficient credits to be generated industry-wide to provide adequate credits for use in compliance in 2004 and beyond? If not, what are the limitations on credits and what changes could be made to improve the likelihood that sufficient credits would be generated?

Our proposal to cap volumes on which credits could be generated at 105 percent of baseline levels is intended to preclude the possibility of closely-located refineries generating credits by moving blendstocks. This could occur if a refinery with a relatively low baseline level moved blendstocks to a refinery with relatively higher levels, thus allowing the somewhat artificial generation of credits. We request comment on whether such a provision is necessary and whether the 5 percent cap should be increased to as high as 10 percent to reasonably accommodate normal growth in volume. We raise some potential alternatives to these provisions in Section IC.C.4.a.vi. below, and encourage your consideration of all of these issues in your comments.

⁵³ If a refinery's baseline average were 150 ppm or less, credits could only be generated for annual average reduction's below the baseline level.

iv. How Would Refiners Use Credits?

Credits generated prior to 2004 would have to be used or transferred by 2007. Credits generated in 2004 and beyond would have to be used or transferred within five years of the year in which they were generated. If these credits were traded to another party, they would have to be used by the new owner within five years of the year of transfer. Since the transfer could occur any time within five years of generation, some credits could have a life of up to ten years.

Our proposed ABT program is designed to ease implementation of the new standards and credits would be of their greatest value during phase-in periods. ABT is not necessarily intended to permit a refinery to operate above the standard for a protracted time period. While limiting credit life might reduce the incentive to generate credits and could create a "use or lose" mentality, the credit program would seem to be of relatively small value to any refiner/importer that held credits for five years and did not need to use them. We believe that limiting credit life is appropriate since we must also consider the basic reason for ABT and address concerns about our ability and the ability of the refiners to maintain the integrity of the credit system over many years. EPA requests comment on credit life including options such as limiting life by depreciating their value over a period of years as well as longer or shorter periods of fixed credit value.

We propose that credits could be withdrawn from a refinery's/importer's credit bank or purchased from another refinery/importer to bring the annual sulfur average for each refinery down to the 30 ppm standard beginning in 2004. There would be no geographic constraints on credit trades. However, as explained in Section IV.C.3.a above, in 2004 no batch of domestically produced or imported gasoline could exceed 300 ppm, and a refinery's/importer's actual annual corporate pool average sulfur level could not exceed 120 ppm. (A refiner owning more than one refinery would have to aggregate the respective sulfur levels of gasoline produced at those refineries for determining compliance with the 120 ppm standard.) In 2005, gasoline sulfur would be

capped at 180 ppm and the corporate pool average could not exceed 90 ppm. The aggregation requirement would also apply in 2005. As described above, credits would apply only to compliance with the 30 ppm refinery standard, not to the corporate pool average or the cap.

A refiner or importer choosing to participate in the ABT program would be required to file annual reports with the Agency indicating the applicable baselines or standard(s) in ppm sulfur, the annual average(s) in ppm sulfur, and the annual volume(s) in gallons (for each refinery). These calculations would be reported, along with an accounting of credits banked, transferred (sold), or acquired (bought). (For 2000–2003, the reports would only cover credits banked and traded.) The credits would be in units of ppm-gallons.

Thus, for each purchase of credits, as reported on the buyer's annual report, there should be a corresponding entry on the seller's annual report. Through the report, refiners would have to demonstrate that their average sulfur levels (with the use of credits, if necessary) comply with the 30 ppm standard at each refinery. Refiners would also have to demonstrate that the combined production from all refineries meets the corporate average standard. As mentioned above, the actual corporate averages could not exceed 120 ppm in 2004 and 90 ppm in 2005. The identity of refiners/refineries and importers involved in these transactions would be reported, along with the registration numbers assigned to them by the Agency under the RFG/CG program (40 CFR part 80, Subparts D, E, and F).

In addition, we are concerned that the potential exists for credits to be generated by one party and subsequently purchased or used in good faith by another, and later found to have been calculated or created improperly or otherwise determined to be invalid. In this case, both the seller and purchaser would have to adjust their sulfur calculations to reflect the proper credits and either party (or both) could be deemed in violation of the standards and other requirements if the adjusted calculations demonstrate noncompliance with an applicable standard. We have taken this approach

in our other fuels enforcement programs. We welcome comments on this provision. In particular, we request comment on whether our program should be designed such that only the seller should be deemed in violation if that party sold invalid credits and, upon correction for this error, was found to have violated one or more standards. In general, mobile source ABT programs hold both parties liable.

For the duration of the credit program, each participating refinery and importer could make deposits to and withdrawals from its "bank account". All transactions would have to be concluded by the last day of February after the close of the annual compliance period (2004, 2005, etc.). It would be up to the industry to establish any mechanisms for linking buyers and sellers. The Agency does not intend to become involved in this marketplace activity.

We are also proposing to allow refiners to miss the 30 ppm standard for an individual refinery and to carry forward the credit debt that would have brought that refinery into compliance in the year the deficit occurred. This is very similar to provisions proposed today for auto manufacturers in complying with the averaging provisions Tier 2 standards. Under this provision, the refiner would have to make up the credit deficit and bring that refinery into compliance with the 30 ppm standard the next calendar year, or face penalties. This program would in no way absolve the refiner from having to meet the applicable per-gallon cap standard. This provision would provide some relief for refiners faced with an unexpected shutdown or that otherwise were unable to obtain sufficient credits to meet the 30 ppm standard. We welcome comment on this provision.

The following Table IV.C.–4 summarizes the compliance dates and program requirements of this proposed sulfur ABT program. See Section VI for more specific information, particularly about the dates that the sulfur caps would apply and the standards that would apply downstream of the refinery.

BILLING CODE 6560–50–P

Table IV.C.-4
Gasoline Sulfur Program Duration and Effective Dates

2000	2000 - 2003	2004	2005	2006	2007+
Application for Credit Program Baseline due by July 1	Early Credit Generation for Gasoline with ≤150 ppm Sulfur				
		Credit Generation for ≤30 ppm Sulfur			
	Banking & Trading of Credits	Banking & Trading of Credits			
		Corporate Average Standards Apply			
		Compliance with 30 ppm Average Standard at the Refinery and Importer Level			
		Phase-in of Downstream Cap Standards			

BILLING CODE 6560-50-C

v. Could Small Refiners Participate in the ABT Program?

We believe that refiners complying under the small refiner provisions outlined in the previous section should not be permitted to use sulfur credits to meet the average standard applicable to their refineries. We are proposing to exclude small refiners from using credits to meet the small refiner standards because the small refiner standards are generally more lenient than the 30 ppm standard and thus these refiners should have less need for a credit trading program than the rest of the industry. Furthermore, small refiners, even those currently producing gasoline near the 30 ppm average, are given an additional two years (until 2008) to meet the 30 ppm standard compared to refiners complying under the sulfur ABT program. We want to ensure that the sulfur levels of the majority of gasoline are reduced on average, and overall, in 2004 and 2005; permitting small refiners to meet the more lenient standards through the purchase of credits could jeopardize that goal by resulting in in-use sulfur levels that are even greater than the maximum small refiner standard (300 ppm average). If a small refiner believed it could generate sufficient sulfur credits in 2000-2003, or obtain such credits through purchases from other refiners, to be able to meet the 30 ppm average and the corporate averages of 120 ppm in 2004 and 90 ppm in 2005, it should choose not to participate in the small refiner program and take full advantage of the sulfur ABT program.

However, small refiners would be permitted to generate and trade sulfur credits if they reduced sulfur levels early in 2000-2003, per the requirements outlined above. Furthermore, a small refiner could sell credits that were generated in 2000-2003 in 2004 and 2005 while at the same time meeting the small refinery standards. A small refiner wishing to generate and sell credits would have to establish the individual refinery sulfur baseline by the deadline specified above for the ABT program (July 1, 2000) but could wait until June 1, 2002 to apply for small refiner status. However, the standards assigned to that refinery (as presented in Table IV.C-3) would be based on the sulfur level from which credits were generated, not the 1997-98 baseline sulfur level, since the refiner would have already demonstrated the ability to meet the lower sulfur level (in this case, 150 ppm or lower on an annual average basis).

At any time, a small refiner could "opt out" of the small refiner program and, beginning the next calendar year, comply with the standards in Table IV.C-2. The refiner would have to notify us of this change in compliance program. Once a small refiner left the small refiner program, however, we propose that it would not be eligible to re-enter the small refiner program. We encourage comments on this provision.

The sulfur ABT program could provide an alternative to offering any small refiner standards, if small refiners were capable of complying with the proposed pool average standards and caps in 2004 and 2005 just as larger

refiners could. In this case, all refiners, large or small, could obtain credits necessary to meet the 30 ppm average standard for the two intervening years. However, EPA recognizes that this may not be the best response to the needs of small refiners, and has proposed, as a result of the SBREFA Panel process, alternate standards in section IV.C.3.b of this document. Indeed many small refiners expressed concern during the Panel process that an ABT program would not address their needs. However, we welcome comments on the pros and cons of using the sulfur ABT program to provide regulatory relief for small refiners in lieu of additional regulatory standards unique to small refiners.

vi. What Alternative Implementation Approaches Are Possible?

As we were developing this proposal, members of the oil industry and others expressed concern that the ABT program as described above may not be of great value in providing flexibility in complying with the 30 ppm standard in 2004. Several different concerns have been expressed.

Industry representatives have asserted that the opportunity to generate early credits is limited because the proposed lead time would be too short to implement enough of the refinery operational changes and capital investments needed to achieve sulfur reductions before 2004. Additionally, the industry is concerned that relying on early credits generated with what is perhaps the best long-term technology(ies) is problematic because the preferred technology(ies) is new and

does not yet have a proven performance record. Their concern is further exacerbated by the uncertainty in the diesel fuel sulfur picture, the MTBE/oxygenates situation developing in California, and the DI petition discussed below, as well as ongoing state initiatives to reduce sulfur in gasoline before this action is decided upon.

When credits are generated, there is a fear that those that generate them will hoard them, particularly refiners that operate several refineries. And when credits are made available for trade, they may not become publicly available in enough time for them to be considered by others in their capital investment planning, so essentially all refineries would have to take steps to implement 30 ppm technology by 2004. These issues may be of special concern to those moderate sized refiners that are too large to qualify as small entities but do not have enough refineries or refineries of the right gasoline production volume to internally optimize their operations under the ABT program.

Given these uncertainties about credit availability, the refiners may need additional flexibility as a means to provide relief to those that make a good faith effort to comply but are precluded by circumstances beyond their control. These may include unanticipated technological and commercial concerns, credit availability problems, or *force majeure* type events.

We have examined this issue of credit availability and our analysis, which is presented in the Draft RIA, indicates that credits should be available by 2004 for the 2004/5 phase-in. This is based on the fact that the 300 ppm cap in 2004 would require that all refineries with a baseline above 300 ppm reduce sulfur by 2004. And, while they could choose to just achieve 300 ppm, some would need greater reductions to comply with the 120 ppm corporate pool average standard and all would be facing increasingly more stringent requirements in 2005 and beyond. Quite simply, we believe that good business sense would dictate that once a hardware investment is made the refinery would shoot for 30 ppm or less. As the analysis shows, this approach implemented over just three years would yield compliance with the 120 ppm corporate pool average and would generate ample credits. We requested comment on our analysis in the Draft RIA and the underlying analytical approach.

EPA is proposing the ABT program described above in order to increase the refiners'/importers' confidence that they could comply in 2004. And, while our

analysis indicates that credits would be available for 2004/2005 compliance, we realize that the ABT program might not meet its objective if the industry did not have confidence that credits would be available in enough time and in sufficient quantities to enable them to make economically efficient investment decisions. It is our desire to provide the industry as much flexibility as possible to ease implementation and phase-in while still meeting the objectives of the program as described above. Toward that end we are asking for comment on several variations on the above proposal that might increase its overall value as a means to provide flexibility in meeting the proposed standards. These can be divided into four categories: (1) Modifications to the design elements of the proposed ABT program, (2) a compliance supplement pool, (3) an allowance-based system, and (4) reserved credits. As constructed below, the compliance supplement pool, an allowance-based system, and reserved credits could be implemented in varying ways to complement the early ABT program. EPA asks comments on the cost and air quality impact implications of these concepts, which are described in more detail below.

Potential Modifications to Proposed ABT Program

Modifications to the base program to increase the potential availability of credits and the time over which these credits could be used might increase the effectiveness of the proposed ABT program. These changes could potentially affect both the near-term when the program was phasing-in and the long term when the 30 ppm standard was fully implemented.

The 150 ppm trigger value is designed to "level the playing field" between companies with relatively low baselines and those with relatively high baselines. Those with high baselines could potentially generate more credits than those with lower baselines, but at a somewhat greater cost since achieving 150 ppm or less becomes increasing more difficult with higher sulfur gasoline. Those with baselines closer to 150 ppm may be able to generate fewer credits, but generate them more easily.

However, requiring that gasoline be below 150 ppm before credits could be generated might preclude credit generation from higher sulfur gasolines that could achieve large, real reductions in sulfur. The size of the potential credit pool could be increased, perhaps dramatically, if the trigger were relaxed or eliminated. We would like comment on trigger values higher than 150 ppm for CG and winter RFG. We would also request comment on expressing the

trigger as a percent reduction from baseline levels (e.g., 10–25%) rather than as an absolute value. In addition, we request comment on a hybrid concept under which credits would be generated for CG and winter RFG depending on initial 1997/1998 baseline sulfur levels (gasoline less than 150 ppm sulfur would qualify, gasoline between 150 ppm and 350 ppm sulfur would need a 10–15 percent reduction, and gasoline greater than 350 ppm sulfur would need a 15–20 percent reduction to qualify.) It would be helpful for those suggesting the "no-trigger" approach to also address the issue of equity among refiners with different baselines.

In combination with comments on the trigger, we also ask for comment on the proposed phase-in approach. The 300 ppm cap effective October 1, 2003 and the timing for the 30 ppm average standard would both be important factors affecting the transition to low-sulfur gasoline. Our analysis of the potential availability of credits (discussed above and presented in the Draft RIA) indicates that most of the credits needed to smooth out the transition would be generated by low-sulfur winter RFG. Our analysis also assumes that a substantial number of credits would be generated by refiners investing in technology capable of producing 30 ppm gasoline prior to 2004 to ensure compliance with the 300 ppm cap. If refiners take another approach to meeting the 300 ppm cap (i.e., one that does not result in significant credit generation), fewer excess credits would be available. However, as long as some refiners invest in 30 ppm technology before 2004, we believe sufficient credits would be available. We encourage comment on our proposed phase-in approach.

Specifically, should the interim phase-in program be extended by an additional year to provide an even smoother transition to the 30 ppm standard (e.g., 120/300, 105/210, 90/180 for 2004, 2005, and 2006)? Should the time frame for the 30 ppm average standard be shifted to 2005, for example, while retaining the 120/300 ppm caps for 2004, to provide more time for transition to the 30 ppm standard? Should credits expire after 2007 (as proposed) or would a shorter (or longer) credit life be appropriate?

We are also seeking comment on a concept that would provide an incentive to introduce clean technology early. Under this concept, any sulfur credits generated before 2004 would be banked at a rate of 1.5 to 2.0 times the amount generated, if the annual average for that

refinery were equal to or less than 30 ppm and if the credits resulted from the implementation of gasoline sulfur reduction technology (hardware) not previously used at that refinery. This multiplier would not be available for credits generated from modest operational changes or product separation at the refinery or downstream. Calculation of the un-multiplied credits would be at the refinery level. Neither domestic refiners nor importers could qualify by segregating product or product streams either from their refinery(ies) or in the case of importers from one or more offshore refineries. Also, while refiners/importers could get sulfur credits under ABT through the use of allowable oxygenates, these could not be used as part of the basis for achieving the 30 ppm average. EPA seeks comment on the need for and utility of such an approach and on whether it is appropriate to encourage implementation of sulfur control technology in this manner.

Compliance Supplement Pool

To address concerns about credit supply and the timeliness of the availability of credits, and as a way of providing additional flexibility, particularly to refiners that encounter unexpected problems in complying, we are considering the concept of a government-created and -operated compliance supplement pool for the sulfur ABT program. Under this concept, the government would create a pool of additional credits that could be provided to refiners/importers. This pool would build refiner confidence that a supply of credits would be available in the market and that credits could in fact be considered as part of the business plan for 2004–2005 compliance. Credits from this pool could first be made available in the 2000–2001 time frame and perhaps in subsequent years and could only be used in 2004–2005. This program would supplement the 2000–2003 early credit approach under ABT.

There are a number of issues related to implementing such a program. The size of the pool potentially available for use in 2004 and 2005 would be a critical issue. A larger pool would lower the chance that a refiner/importer could not get credits, but would reduce the environmental benefits of the overall program. Clear rules on the availability of credits would need to be established at the outset so that refiners/importers could make correct investment decisions. In addition, EPA would not want a compliance supplement pool to supplant the need for each refiner to

make aggressive efforts to comply in the appropriate time or for a pool to create a disincentive for refiners to generate early credits. If credits from early reductions were available at a reasonable price, EPA would prefer that refiners/importers purchase such credits rather than looking to a compliance supplement pool. EPA seeks comment on the appropriate size of a compliance supplement pool in light of these factors.

The conditions under which a refiner/importer would be eligible for credits are important. For example, the pool could be made available only to refiners that had demonstrated that they had made a good faith effort to comply with the 2004 requirements, but, due to circumstances beyond their control could not do so. Providing credits to a refiner that failed to make good faith efforts to procure and install the technology would create the wrong incentives and could be unfair to competitors that had invested resources to comply.

Options for distributing credits in the pool might include granting credits as rewards to those that generated some early reductions, distribution based primarily or solely on need, equal distribution to all, pro-rata distribution based on volume, making credits available at a fixed price, or a credit auction. These approaches could be considered singly or in combination. For example, the majority of the compliance supplement pool could be distributed based on need, with due consideration of the effect of lack of credits on gasoline supply in a given area. In this case, the remaining portion might be set aside and auctioned off to provide a price signal and a certain source of credits.

It would seem that any such compliance pool should be administered by the government or its agent, but decisions on credit applications would include a public process. As part of our deliberations on this concept we need to decide whether credits could be used to meet the interim corporate pool averages (120/90 ppm) or just the 30 ppm standard or both. Unlike credits generated by refiners/importers reducing actual sulfur levels, any credits under this program would expire after 2005.

Credits from the compliance supplement pool would be government-created and not derived from actual reductions in gasoline sulfur. If credits from the compliance supplement pool were distributed at little or no cost to the receiver, such an approach might create an inequity between those using credits and those who invested in

technology to reduce sulfur. As a means to address the potential environmental effects of these government credits and to correct financial inequities among refiners/importers, we seek comment on a provision that would require those awarded these credits from the compliance supplement pool to repay them. The credits to be used for repayment could be generated internally in 2004–2006, purchased surplus credits from other refiners/importers, or simply unused credits originally distributed from the compliance supplement pool. These credits would have to be repaid by the expiration of the period to close credit balances under the interim program (2006, taking into account the one-year credit debt carry-forward provision).

If, as mentioned above, credits were sold at a fixed price or auction, several issues would arise. Should payment be through monetary means? If so, what is EPA's authority to engage in such monetary transactions, and what would be done with any proceeds? There is also an issue with regard to a requirement to both buy credits for cash and then also repay with credits. Alternatively, credits could be allocated based on a determination that a refiner/importer needs the credits, in conjunction with a determination regarding the refiner's/importer's ability and willingness to repay the credits to the pool in the future at a rate greater than 1:1. A credit auction could be held in a similar way, that being the willingness of the bidder to repay the credits in the future at a rate greater than 1:1. In these approaches, a refiner/importer seeking credits might be willing to repay them at a rate of say 1.2:1, thus essentially offering or bidding a 20 percent premium. This could be done as a one-time premium or perhaps as a discount at the time the credits are issued from the pools. Under this system no money exchange would be required. This would simplify set-up of the compliance supplement pool, allow refiners to conserve capital for purposes of capital investment, and create an environmental return for the compliance supplement pool. In addition, it would result in credits being provided to refiners/importers that need them, and that are expected to achieve additional environmental benefits in the future by generating or purchasing excess credits.

The "reasonableness" of the price of credits is critical to any approach requiring repayment from those entities using these credits. We request comment and suggestions on ways to establish reasonable credit prices. For example, as an upper bound, EPA might

set a credit price based on information received during the rulemaking on the cost of sulfur removal for different technologies.

EPA also seeks comment on whether refiners/importers that used credits from the compliance supplement pool should be excused from the repayment of some or all of the credits if they could demonstrate that it was not feasible for them to generate credits themselves and insufficient credits were available at a reasonable price. Finally, EPA seeks comment on how to ensure that refiners/importers that used credits from the compliance supplement pool would in fact repay those credits. One option would be to hold such refiners/importers liable for failure to meet the sulfur standards over the averaging period during which they relied on credits from the compliance supplement pool, if such credits were not repaid in time. EPA seeks comment on this option, as well as other alternatives that would ensure that compliance supplement pool credits were repaid.

EPA has some experience with the compliance supplement pool approach as part of the NO_x SIP Call (ROTR) discussed in Section III above. In this process, a compliance supplement pool was created to address concerns raised by industry about how the requirements might affect the reliability of the supply of electric power. The size of the NO_x compliance supplement pool was created based on an EPA projection of what compliance shortfalls might result if problems developed in implementing the control technology. The NO_x SIP Call pool may be allocated through direct distribution based on need or as a reward for early reductions.

Allowance-Based System

In the context of gasoline sulfur, a traditional allowance program would provide more confidence in the availability of "credits" (surplus allowances) by creating sulfur budgets that the industry (refiners and importers) would be required to meet during the 2004–5 phase-in and perhaps beyond. This budget would be created on a mass basis using gasoline volume and the applicable regulatory standard. This budget would then have to be allocated to individual refiners and importers. If an individual refinery or importer had sulfur levels below its allocation this would create surplus allowances that could be traded. Allowances for 2004 and later would be made available in 2001. This would facilitate the development of a market in allowances, since those planning to beat the requirements for 2004/5 could market their allowances early. This

could significantly contribute to the certainty that surplus allowances would be available in time for consideration by others in their 2004 business planning.

While there are other possibilities, it would seem reasonable to allocate the budgets to individual refiners/importers in the 2004 and later time period based upon their individual percentages of the gasoline market. To be consistent with other aspects of this proposal this could be done at the corporate level in 2004/5 and at the individual refinery/importer level in 2006 and later.

One major benefit of such an approach is that refiners/importers could trade part or all of their 2004 and later allowances for future use without EPA involvement and those purchasing these allowances could do so early enough to allow a more orderly and reasoned set of capital investment decisions. Also, since it would be allowances, not credits, that would be traded, the seller could be held solely responsible for failure to meet its budget without involving the buyer. The trading of allowances would be relatively unencumbered. Allowances could be used to meet the budgets allocated under the regulatory standard.

This approach would provide increased flexibility and certainty, it is not clear that a large number of surplus allowances would be created, since surplus allowances would only exist relative to a budget based on the 30 ppm standard. Obviously the number of allowances created in 2004 and 2005 could be increased if the budget were based on a value higher than the 30 ppm regulatory standard, but this would require a fundamental change in overall program design. Alternatively, the number of surplus allowances might be increased if the allowances program were started earlier. For example, refiners/importers could be allocated budgets beginning in 2001 based on the product of their 1997/1998 sulfur baselines in ppm (with appropriate adjustments for RFG Phase II) and their gasoline volume. Any reductions in the average sulfur levels or volume from the baseline level during that 2001–2003 time period would result in surplus allowances.

While the idea of pre-2004 allowances has merit, it requires the *de facto* implementation of a standard before 2004 (since each refiner's/importer's budget would in effect be a standard), in order to establish allowances. And, in contrast to the ABT program where participation is voluntary and no requirements exist before 2004, an allowance system would require refiners subject to the allowance program to hold sufficient allowances to cover their

calculated mass emissions starting in 2001.

In principle, an allowance system could be designed to incorporate all of the features of an ABT credit system as described above. We are interested in comment on the viability of such an allowance program as an alternative to the traditional ABT program and whether such a program would have to be mandatory for all refiners/importers in order to be effective. For example, could we structure an allowance program such that the refiner opts into it if it intends to generate or use allowances or opts out of it if it does not? We are also interested in comment on the parameters of such a program, including the appropriate budget levels, methods for distributing the budgets to refiners/importers, and whether allowances could be used to meet the corporate pool averages, the regulatory standard, or both. As with the ABT program, we would like to hear your views on the years over which such a program should apply (e.g., should it start in 2001?, should it extend beyond 2005?), as well as the other regulatory requirements that should apply in each year.

We also request comment on whether the allowance program could be established as a supplement to the credit program. If an allowance program is implemented along with a compliance supplement pool and/or early ABT we are interested in comments on how to make credits fully exchangeable among the programs. We are also interested in comments on how the programs could/should be integrated. For example, could we let a refiner/importer generate early ABT credits and at the same time sell 2004–2005 allowances?

Reserved Credits

EPA is also aware of concerns regarding whether refiners that earned or received credits would make them available in a timely manner to those that needed them, particularly to small- to mid-sized refiners/importers. If an adequate number of credits were not available in a timely manner and for a reasonable price, small- to mid-size refiners would have no choice but to pursue near term capital investment to comply in 2004. This might be the appropriate course for many of these refineries, but we do not think it is appropriate for them to be precluded from the same flexibility as larger refineries.

We are seeking comment on whether we should require that a set percentage (e.g., 1015%) of all credits generated in early ABT (2000–2003), awarded

through the compliance supplement pool, or earned through the allowance-based approach either must be retired or offered for trade outside of the refining company that originally generated or was granted them. Under such a provision, refiners/importers would be required to set aside a percentage of credits/allowances they generate, but could choose whether to retire them or offer them for sale at a fair market price to another refiner/importer. Regardless of which option the refiner/importer chose, the results would be beneficial—the environment would benefit if credits are retired, and credit availability would improve if the refiner chose to sell credits. We are also interested in your views as to how this objective might be accomplished.

EPA also asks comment on the disposition of credits that were put up for trade one or more times during the period 2004–2006 but did not sell during that period. This could be the case if a credit owner offered credits for sale at a price in excess of fair market value and thus they were not purchased by another party or if credit supply significantly exceed demand. In this kind of situation, should the credits be retired or revert to the generator at a full or reduced rate (e.g., 50%) for future use in compliance determinations? We request comment on whether such a provision for reserved credits would be needed by small- to mid-sized refiners and whether the reservation of 10–15 percent of credits would be sufficient to address the concerns. We also seek comment on whether such a pool should be supplemented by the government through an auction to ensure that the pool size is adequate and whether such a pool could be useful in helping to establish a market price for company owned credits.

b. Refinery Air Pollution Permitting Requirements. As discussed previously in this document, this proposed program would result in significant emission reductions from reducing sulfur in gasoline nationally, through the emission reductions from the current fleet of vehicles and ensuring the efficacy of new technologies in future vehicles. In order to achieve this environmental benefit as soon as possible, we want to be sure the public is aware of the full range of available methods for expediting permits required for refinery process changes to reduce gasoline sulfur. Expedited permitting also will facilitate refiners' ability to generate sulfur credits, under today's proposed sulfur Averaging, Banking and Trading program, described in the previous section.

There are two key Clean Air Act permitting programs that refiners must comply with when making changes at their existing facilities to implement gasoline sulfur control—the New Source Review (NSR) program and the Title V operating permit program. Typically, both of these programs are administered by state/local permitting agencies, with EPA oversight. While the basic requirements of these programs are dictated by the Clean Air Act and EPA regulations, the specific requirements of each state/local permitting program may vary.

We recognize that compliance with these air permitting requirements is an integral component in any plan to implement the gasoline sulfur control program under the schedule proposed today. To help refiners meet the permit requirements, below we discuss the possible mechanisms to address the substantive requirements of the major NSR and Title V programs, including possible opportunities to streamline and expedite the processing of permit applications. Finally, we conclude this section by discussing possible tools that we are currently testing in the experimental Pollution Prevention in Permitting Program (P4), which promotes permit streamlining and flexibility for Title V operating permits, along with increased pollution prevention activities. We encourage commenters to provide suggestions for additional opportunities to streamline the permitting process to accommodate the implementation of the proposed gasoline desulfurization requirements for the refining industry sector.

The American Petroleum Institute (API) has sent a letter to EPA outlining its concerns about the potential impact of various permitting requirements on the industry's ability to meet future gasoline sulfur standards, as well as their suggested options for permit streamlining.⁵⁴ This letter is included in the docket for this rulemaking. We are aware that individual refineries are in different situations regarding the modification to current operation that would be needed to meet the proposed sulfur standard and the regulatory requirements applicable to those modifications. Based on the limited information available at present, some refineries may not increase emissions significantly, and others may find it most economical to make on-site emission reductions at the plant to avoid emission increases. Accordingly,

⁵⁴ Letter from William F. O'Keefe, Executive Vice President, American Petroleum Institute, to Bruce Jordan, U.S. EPA, Office of Air Quality Planning and Standards, dated February 12, 1999 (Docket item IIG-304).

we request comment on the extent to which the various mechanisms to streamline the permitting process discussed in this section are in fact needed or useful. We request that commenters supporting such streamlining describe the specific refiner situations in which they believe streamlining is needed, and encourage them to provide any suggestions for additional opportunities to streamline the permit process to expedite refineries' preparation to meet the proposed sulfur standards.

i. New Source Review Program.

The New Source Review (NSR) program,⁵⁵ as it applies to existing major sources of air pollution, requires that a preconstruction permit be issued before a source begins construction of any project that would result in a significant net emissions increase. With respect to NSR, we anticipate that refineries will fall into one of two categories if the proposed sulfur standards are implemented. The first category consists of those refineries that would be able to avoid major NSR by demonstrating that the physical and operational changes needed to reduce gasoline sulfur do not result in a net emission increase of the quantity that would require a major NSR permit. Major NSR would not apply where: (1) The proposed changes would not result in an emissions increase at the refinery; (2) the increase is, in and of itself, less than "significant"⁵⁶; or (3) the refinery "nets" the project out of review. In most cases, even where a refinery change to accommodate the production of lower sulfur gasoline does not trigger the major source NSR program, the project still will be subject to a state's general, or "minor," NSR program.⁵⁷ The second category consists of those refineries that would experience a significant net emissions increase as a result of process changes necessary to accommodate gasoline sulfur control and, therefore, will trigger major NSR applicability and the attendant permit process (e.g., nonattainment NSR or Prevention of Significant Deterioration). Accordingly, such facilities must obtain a major source preconstruction permit prior to making these process changes.

As described previously in today's document, there are several types of process changes refineries could make to meet the proposed gasoline sulfur

⁵⁵ See 40 CFR 51.165, 40 CFR 51.166, 40 CFR 52.21, 42 U.S.C. 7475, and 42 U.S.C. 7503.

⁵⁶ EPA's and state/local regulations for major NSR define "significance" levels for various pollutants.

⁵⁷ This permitting program applies to the construction or modification of any stationary source. See 40 CFR 51.160 and 42 U.S.C. 7410(a)(2)(C).

levels. Traditional sulfur removal technologies include installing a hydrocracker upstream, or a hydrotreater upstream or downstream, of the fluidized catalytic cracker (FCC) unit, the unit that produces the largest fraction of gasoline. There also are improved desulfurization technologies, CDHydro and CDHDS (licensed by the company CDTECH) and OCTGAIN 220 (licensed by Mobil Oil). These technologies use conventional refining processes combined in new ways, with either improved catalysts or other design changes to maximize gasoline desulfurization effectiveness with minimal negative effects, such as octane loss. To different degrees, all these technologies involve the use of a furnace and, thus, have the potential to increase pollutants associated with combustion, such as NO_x, VOCs, PM, CO, and SO₂. The addition of these technologies also could result in equipment leaks of petroleum compounds, which could increase emissions of VOCs and other pollutants. It also is possible that the increased removal of sulfur from the gasoline stream might require increased capacity of a number of refinery processes, such as the sulfur recovery unit (SRU), which converts hydrogen sulfide into elemental sulfur and is associated with SO₂ emissions. The emission increase associated with a desulfurization project will vary from refinery to refinery, depending on a number of source-specific factors, such as the specific refinery configuration, choice of desulfurization technology, amount of gasoline production, and type of fuel used to fire the furnace.

While we do not have sufficient information at this time to estimate the number of refineries nationwide that will trigger major NSR, we believe it could be substantial, given that over 100 refineries in the country would be required to make desulfurization process changes under today's proposal. Estimates from one vendor indicate that its desulfurization process could result in emission increases that are considered "significant" in severe ozone nonattainment areas (i.e., greater than 25 tons/year of NO_x and VOC), which would trigger major source nonattainment NSR review. Since the significance threshold generally is lower in certain nonattainment areas (i.e., those nonattainment areas classified as serious and above for ozone), refineries located in those nonattainment areas may be the most likely to trigger major NSR review. There are many refineries located in ozone nonattainment areas (e.g., parts of the Gulf Coast).

NSR Applicability Principles

A refiner's ability to avoid triggering major NSR by keeping emission increases below the major NSR applicability cutoffs will depend primarily on the case-by-case circumstances of each refinery. Nevertheless, numerous means by which a source can otherwise legally avoid major NSR permitting are available to all refineries for consideration and possible use. In addition, as discussed below, the Agency is prepared to work with refineries to explore the use of certain NSR applicability mechanisms (i.e., plant wide applicability limits or "PALs"), where appropriate.

To the extent needed, we intend to work with state/local permitting authorities to provide assistance with the proper application of the NSR rules on an expedited basis for permits involving refinery desulfurization projects. We want to ensure that applicability decisions are made at the earliest possible opportunity and consider the full spectrum of options available so that a refiner can adjust, or possibly reconfigure, planned desulfurization projects so as to prevent significant emission increases and thereby avoid major NSR within the framework of the current regulations. In addition, timely applicability decisions will provide added certainty as to the applicable NSR requirements and, where a major NSR permit is needed, how to best to expedite the issuance of a permit.

Depending on the nature of the physical or operational changes necessary to accommodate desulfurization projects, the NSR applicability process for major modifications can be a complex and time consuming exercise. The NSR regulatory provisions require that a proposed physical change result in a significant net emissions increase in order for the change to be considered a modification and therefore subject to NSR. We expect that there likely will be questions regarding which, and how, existing emission units are affected by the change, including how to calculate the magnitude of the emissions change for major NSR applicability purposes. We are committed to working with refiners and state/local air pollution control agencies to clarify and ensure that, in applicability analyses for gasoline desulfurization projects, only those emissions increases resulting from the physical or operational changes necessary to comply with gasoline desulfurization requirements are included in the applicability analysis.

In doing an applicability analysis for major NSR, refineries should analyze their past, current, and future operations and emissions to determine whether it is possible to avoid major NSR based upon their facility-specific circumstances, including the use of previous emission reductions at the facility to "net" out of NSR. Similarly, sources might avoid NSR by using Plantwide Applicability Limits (PALs) to cap emissions. Emissions netting is a term that refers to the process of considering certain previous and prospective emission changes at an existing major source to determine if a net emissions increase will result from the proposed new project. Where the sum total of creditable increases and decreases across the refinery is less than significant, major NSR would not apply. In addition, if the proposed emissions increase from a proposed project (in this case, a project undertaken to reduce gasoline sulfur levels) is by itself, without considering any decreases, less than significant, major NSR would also not apply.

PALs may provide another opportunity for refineries to avoid triggering major NSR applicability. The voluntary, source-specific PAL is a straightforward, flexible approach to determine whether changes at an existing major source of air pollution result in a significant net emissions increase. By restricting (or "capping") a facility's emissions to a level representative of current actual emissions, a PAL allows a source to change operations and equipment without having to undergo major NSR permitting. For example, as long as refinery activities do not result in emissions above the PAL cap level, the refinery would not be subject to major NSR, regardless of the nature of the activity. Under a PAL, instead of a case-by-case assessment of whether a proposed change is subject to or excluded from major NSR, the refinery manager knows that as long as the refinery stays within its emissions cap, major NSR will not be triggered. Production units may be started and stopped, production lines reconfigured, and products changed and revamped without delay from major NSR permitting.

Because of these advantages, the Agency previously has proposed to incorporate PALs in all of its NSR regulations (see 61 FR 38250, 38264, July 23, 1996), and has worked with state permitting authorities to develop PALs for individual sources. Likewise, the Agency is committed to exploring the propriety of authorizing PALs for refineries subject to the final gasoline

sulfur control rules. We are examining our authorities to assure they support these approaches. Should it be necessary, EPA stands prepared to issue final regulations to make PALs available to sources making changes to comply with these gasoline sulfur control requirements.

We are further committed to investigating with affected refineries whether a PAL might be a valuable tool for managing a number of other Clean Air Act requirements. For instance, depending on the relevant state rules, a PAL also could include terms that allow facility changes to be made without triggering minor NSR. It is our experience that, in the cases where PALs have been applied, both industry and air pollution regulators have benefitted from the regulatory certainty and simplicity a PAL provides. The use of a PAL can enhance a refinery's ability to make appropriately designated changes quickly, without having to evaluate a baseline for each modification, determine the contemporaneous increases and decreases, and engage in other time-consuming netting procedures required under the major NSR program on a case-by-case basis. A PAL also can encourage a source to reduce emissions voluntarily (e.g., from pollution prevention or other emission reduction efforts), so that it has sufficient room for growth (under the PAL) to accommodate increased emissions from future process changes.

Approaches to Expedite the Processing of NSR Permit Applications

Notwithstanding the availability of the major NSR applicability principles and mechanisms discussed above, we anticipate that it will not be possible for all refineries subject to the gasoline desulfurization requirements to prevent significant emission increases and avoid major NSR. Additionally, even those facilities that are able to avoid major NSR likely will be required to obtain a state minor NSR permit. For facilities subject to major NSR, the timing of permit issuance could vary depending on many factors, including the complexity of process changes, the type of permit required, air quality impact, control technology reviews, and the state's overall permit workload. It is not uncommon for issuance of a major source preconstruction permit to take six to 12 months from the receipt of a source's complete permit application. In addition, determining the applicable permitting requirements for refineries is often complex, due to the wide array of emission points and processes.

To help expedite the NSR permitting process, we suggest the following

streamlining approaches. Since state/local governments typically are the lead permitting agencies, we will work closely with them on any of these efforts. We solicit comments on the efficacy of these approaches and opportunities for additional streamlining. We are particularly interested in understanding whether these permit streamlining approaches could enable refineries to begin voluntarily producing lower-sulfur gasoline earlier than the compliance dates proposed today, so that the environmental benefits may be realized sooner than 2004 and ABT credits (see previous Section) could be generated.

- *Federal guidance on streamlining certain major NSR permitting requirements, such as control technology and compliance parameters.* Although the major NSR permit is a case- and source-specific evaluation, we could provide guidance on certain aspects of refinery projects designed to reduce fuel sulfur that share a common requirement or circumstance. For example, for refinery projects permitted in the same time frame, the Lowest Achievable Emission Rate (LAER) requirement should be the same for identical emissions units regardless of the location of the individual refinery. In this case, we could define for the industry what emissions levels would be expected to meet LAER and provide model permit conditions, including appropriate monitoring, record keeping, and reporting. Although Best Available Control Technology (BACT) determinations require case-by-case considerations, we also could issue guidance setting out a level of emissions that, in our view, satisfies BACT for the class or category of emission units associated with refinery desulfurization. We expect that providing BACT and LAER guidance would help to expedite major source permitting and add more certainty to the permit process. Consequently, for any applications processed within a discrete time frame, a presumptive federal LAER and/or BACT could be established.

- *Availability of offsets.* The major NSR permitting provisions require that a significant emissions increase of nonattainment pollutants must be offset by emission reductions from other sources. We solicit comment on the need for offsets by refineries making modifications to meet the proposed sulfur standards, and the expected size or volume of any offsets that may be necessary. In addition, to the extent offsets may be useful or necessary, EPA requests comment on whether on-site emissions reductions at the refinery could be used to avoid the expected

emissions increases that would otherwise occur. We will work with refiners and state/local air pollution control agencies to explore options and possible new approaches that would help ensure the availability of offsets. For example, it may be possible to establish pre-funded offset pools, designed specifically for offsetting emissions increases resulting from gasoline desulfurization projects. We believe that the establishment of preapproved offset banks or pools could greatly expedite permitting in nonattainment areas.

To help give certainty that offsets will be available, we seek comment on how and whether emission reductions resulting from vehicles operated on low sulfur gasoline could be used as offsets by refineries implementing gasoline sulfur controls. For example, it may be possible for a state, within a given nonattainment area, to set aside a portion of the emission reductions expected from vehicles operating on low sulfur gasoline and dedicate those reductions for use as offsets by refineries. These offsets would have to meet all the criteria currently established for being creditable, and could not be "double-counted" by the state for other SIP planning purposes. We request comment on the ability of emission reductions from the use of low sulfur gasoline to meet the Clean Air Act's criteria for creditable offsets for NSR purposes. Since securing offsets can be a significant challenge to sources undergoing major NSR permitting in nonattainment areas, we believe this approach could substantially speed up, and add certainty to, the permitting process. We believe this approach is worth evaluating, given the enormous emission reductions resulting from the use of low sulfur gasoline, and given that some refineries will trigger major NSR solely as a result of the process changes needed to produce this new gasoline. Finally, EPA seeks comment on whether providing the ability to use the emissions reductions resulting from the use of low sulfur gasoline in vehicles as offsets for refineries producing low sulfur gasoline can be limited to this specific situation. Specifically, EPA requests comment on the concern that providing this option to refineries would allow the use of such emissions reductions as offsets for other stationary sources.

As discussed above, we believe that refineries in ozone nonattainment areas could be the most likely to trigger major NSR review, based on net emission increases of NO_x and/or VOCs. The proposed Tier 2/gasoline sulfur control program is expected to result in over

500,000 tons of NO_x reductions and over 100,000 tons of VOC reductions nationwide in 2004 (the first year of implementation), as well as substantial reductions in particulate matter and sulfur dioxide, as described elsewhere in this document and the draft Regulatory Impact Analysis.⁵⁸ In a given nonattainment area, the program could result in hundreds to thousands of tons of NO_x and VOC reductions, depending on the inventory of cars and light-trucks in the area. For example, for the New York metropolitan area, EPA projects NO_x emission reductions of 7,344 tons and VOC emission reductions of 1,285 tons in 2004 resulting from the proposed Tier 2/gasoline sulfur control program.⁵⁹ We anticipate that only a small fraction of these total emission reductions in a given area would be needed for use as offsets for refineries implementing gasoline sulfur control projects.

- *Model permits and permit applications.* It may be possible to develop an individual, or series of, model permits or permit applications for gasoline desulfurization projects. Rather than each individual refinery having to develop its own permit application from scratch, a generic permit application form could be developed to address common issues. To file a major source application, a refinery would only need to fill in the blanks as they may relate to case-specific assessments, such as air quality impacts. Similarly, a model permit could contain all necessary compliance measures avoiding the time spent in developing individual permit conditions. Model permits or permit applications would serve as templates, thereby eliminating much of the time and uncertainty associated with processing each application.

- *EPA refinery permitting teams.* We could establish a team of experts to be available as a resource, as needed, to refineries and state/local agencies to troubleshoot permitting issues that may develop with individual applications. The team could be made up of EPA permitting experts empowered to make decisions and resolve issues quickly.

In addition to the above opportunities to streamline the permitting process, we encourage states to process a refinery's

request to implement changes at a facility to meet gasoline desulfurization requirements as a priority and on an expedited basis. Priority treatment, in combination with the above opportunities to streamline the process, would ensure that permit applications associated with gasoline desulfurization changes are processed as expeditiously as possible. Given the enormous environmental benefits that we estimate would be achieved as a result of the proposed gasoline sulfur control requirements, we believe such expedited and special processing is appropriate.

ii. *Title V Operating Permit Program.*

We recognize that the changes to be made by refiners to implement gasoline sulfur controls typically would involve not only NSR preconstruction permitting requirements but also those of the title V operating permit program. Title V requires owners or operators of "major" and certain other sources to obtain an operating permit—a document that identifies all emissions units, their applicable requirements as developed in accordance with the Clean Air Act, and monitoring and other permit conditions to provide a reasonable assurance of compliance with each of the applicable requirements on an ongoing basis. Most of the refiners likely are "major" sources subject to title V, due to their plant-wide level of emissions. As with other process changes, prior to implementing gasoline sulfur controls, refiners would need to work with their state, local, or tribal permitting agency to determine what requirements apply and what changes might be required to the source's title V permit application or permit (if one has been issued).

A critical element of any successful title V permitting strategy to accomplish the necessary desulfurization is how best to integrate the procedural and substantive requirements of the title V and NSR permit programs. We believe the title V permitting process provides an excellent opportunity to accomplish this integration and to impart greater certainty into the ultimate approvability of a gasoline desulfurization project under both permit programs. Depending on a specific permitting authority's program and when the desulfurization activity would occur relative to the issuance of the refinery's initial title V permit, the NSR preconstruction permit and the title V permit processes might be done in parallel or in sequence.

Where the title V permit is issued before the desulfurization activity commences, this permit must be updated before operation of the changes that would also be subject to NSR. In this case, we suggest that the

preconstruction permit review process, managed by the permitting authority, be merged with the title V permit revision process so as to satisfy the procedural safeguards and the same substantive requirements of the NSR and title V programs at the same time.⁶⁰ If this is done, the title V permit may be administratively amended to incorporate the contents of the NSR permit prior to operation of the desulfurization process changes. Where the appropriate NSR action (major or minor) approving the desulfurization changes precedes the issuance of a source's initial title V permit, the applicable NSR process can still be "enhanced" to address title V obligations. Here, in order to determine approvability under both title V and NSR, the permitting authority can issue a separate title V permit specifically for the desulfurization project in advance of the title V permit that will be issued subsequently for the rest of the site. Finally, if issuance of the title V permit issuance for the entire source would precede the NSR construction, depending on several factors, the permitting authority could conduct simultaneous permit processes to accomplish preconstruction approval of the desulfurization project and title V approval for the operation of the project in conjunction with the entire refinery source.

Beyond synchronizing when the two permit programs would be implemented, we recommend that permitting authorities take approaches in the substantive permitting of the desulfurization projects that will both assure compliance with all applicable air requirements and result in a more flexible and efficient permit design. We encourage that the approaches in the

⁶⁰ The concept of a merged NSR/title V process refers to the combination of the title V review process with any otherwise applicable state preconstruction review process, where such process satisfies the procedural requirements of the title V's permit revision, permit review, and public participation provisions. Example state review processes that may be eligible for merger include, but are not limited to, preconstruction review of major or minor NSR, source-specialized State Implementation Plan revisions, and procedures implementing section 112(g) of the Clean Air Act. Under a merged process, activities are only presented in a public forum once, rather than in sequence, to avoid duplication of process. Upon completion of the merged process, a successful project would have met all federal permitting requirements, including review by the public, EPA and affected States, and opportunities for EPA objection and public petition, and can implement both processes without delay. Qualifying activities that have received preconstruction review permits meeting the requirements of 40 CFR 70.7(d)(1)(v) may be incorporated into title V permits as administrative permit amendments.

⁵⁸ Although these emission reduction estimates are for the combined Tier 2 emission standards/gasoline sulfur control program, in 2004, nearly all these emission reductions would be attributed solely to vehicles fueled by low sulfur gasoline, since vehicles meeting the Tier 2 emission standards would comprise only a small fraction of the vehicle fleet.

⁵⁹ See draft Regulatory Impact Analysis, Chapter III.

title V "White Papers"⁶¹ be considered to focus both the content of title V applications and permits. In particular, we recommend that permitting authorities and owners or operators of refineries consider the "streamlining" of multiple applicable requirements applying to the same project. Under the streamlining concept, where multiple applicable requirements apply to the same emission unit(s), the permitting authority may develop one emission limit (with associated monitoring, recordkeeping, and reporting) that assures compliance with all applicable requirements. For example, several aspects of the control requirements necessary to implement our maximum available control technology (MACT) and new source performance standards (NSPS) requirements, State Implementation Plan (SIP), and NSR programs (including both major and minor NSR, as applicable) could be considered for streamlining per White Paper Number 2. Where successful, this streamlining will result in a single control requirement (or emission limit), coupled with appropriate monitoring, recordkeeping, reporting, and testing requirements that yield a reasonable assurance of compliance for all subsumed requirements.⁶²

We also are willing to explore applying to the varying situations of sulfur removal at refineries certain permit design approaches that have previously been limited to some permitting pilot projects. In particular, in partnership with permitting authorities, we have been working with selected industries at specific sites to conduct Pollution Prevention in Permitting Project (P4) pilots. These projects respond to the Administration's goals for reinvention in order to implement environmental permit programs in a more streamlined fashion, while assuring required levels of environmental protection. Based on our prior experience with these regulatory reinvention projects, permit design options for refiners implementing gasoline desulfurization projects might include, but are not limited to, any of the following approaches:

- Advance approvals of certain types of changes in title V, including those subject to minor NSR.⁶³

- Provisions that where met would prevent another requirement from applying (e.g., plant wide applicability limits (as noted above) to address potential major NSR applicability).

- Model permit conditions, such as a presumptive, streamlined approach to meet all applicable control technology requirements to expedite permitting decisions, where applicable.

- Adding terms to a title V permit so as to preauthorize a faster permit revision process where one is necessary to add further details within an approved approach (e.g., the minor instead of significant permit modification process).

- Permitting the worst-case emissions scenario to address all applicable requirements applying in a range of possible operating scenarios or to prevent certain requirements from applying.

- Permitting alternative compliance options where an owner or operator of a source needs the flexibility to vary the compliance approach with changing refinery conditions.

- Using pollution prevention approaches to facilitate compliance with applicable requirements and/or required permit terms.

We recognize that the situations for refineries affected by the proposed gasoline sulfur control program can vary widely (e.g., sulfur level in the gasoline, size of the stream, air quality status of the area, etc.), and that the actual permit approach for an individual refinery may be a combination of certain options outlined above and previously for streamlining NSR. Any title V approach must, however, assure compliance with all applicable requirements linked to the necessary construction and provide a meaningful opportunity for all affected parties to review the appropriateness of a proposed approach as it would apply to a particular site. For example, where new desulfurization units would be required and would be well controlled so as to result in emissions below the threshold for triggering major NSR, then an advance approval of minor NSR requirements in combination with certain operationally limiting conditions might be an appropriate strategy. Where

gasoline desulfurization and its support activities would be preapproved for title V purposes before its actual construction, provided that the terms of the title V permit governing the advance approval are met. The Agency has a possible non-binding interpretation of the Title V regulations that would provide for the advance approval of certain new emission units and control devices. See 63 FR 50279, 50315-20 (Sept. 21, 1998) (Section IV.L., Permitting and Compliance Options/Change Management Strategy, in National Emission Standards for Hazardous Air Pollutants for Source Categories: Pharmaceuticals Production).

the addition of such a unit would trigger major NSR, then the strategies that combine the reviews and streamline the requirements of both title V and major NSR offer promise. In a few cases, rebinding of high sulfur gasoline blend stocks, blending in low sulfur oxygenates, or using sweeter crude oil might be sufficient to achieve the necessary sulfur reductions and require few, if any, additional title V permit terms to implement.

iii. *EPA Assistance to Explore Permit Streamlining Options and Solicitation of Comment.*

We are committed to exploring the possible approaches described above. Accordingly, if there is sufficient interest and need, as expressed in comments on this proposed rule, within the refining industry and among state permitting authorities, we will hold a P4/flexible permit workshop focused on the permitting of the refining industry arising from the gasoline desulfurization program. Additionally, should a permitting authority and owners or operators of affected facilities within a common jurisdiction express a desire for a specific flexible permit project aimed at the development of permit language to facilitate refinery activities to reduce gasoline sulfur, then in accordance with already established principles for initiating similar permit projects, we would be willing to work with a designated refinery. We intend that the approaches derived from such efforts could then serve as a template as needed for use by other refineries and state permitting authorities, provided the approaches are modified to conform with all applicable state title V and NSR requirements.

We believe that application of one or more of the approaches described in today's document would reduce any burden of meeting NSR permit requirements and revisions to title V permit applications or permits to incorporate the gasoline desulfurization requirements adopted in the final rule. However, the use of one or more of these approaches would have accompanying resource requirements. For example, it is possible that the initial resources required to establish a PAL, and the attendant monitoring, recordkeeping and reporting requirements, could involve as much time and resources as associated with a typical NSR permit. However, once established, a PAL could provide more flexibility and minimize future resource demands than more traditional permit approaches. Accordingly, we request that permitting authorities, owners or operators of affected facilities, and the public comment on whether use of the

⁶¹ *White Paper for Streamlined Development of Part 70 Permit Applications*, Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. EPA, July 10, 1995 and *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*, Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. EPA, March 5, 1996.

⁶² See Section II.A. of White Paper Number 2.

⁶³ Advance approval means that a particular project (or class of projects) like one to accomplish

approaches described in today's document will achieve appropriate streamlining of controls and requirements arising out of this rule and meet the objectives of the NSR and title V permitting programs.

c. *Should Hardship Relief Be Available?* Elsewhere in this document (Section IV.C.3.b.), we propose a hardship provision that would apply to small refiners. EPA seeks additional comment on whether it should adopt a hardship provision allowing for compliance with standards less stringent than those proposed today during the early years of the program. While EPA believes that it is feasible for most refiners to meet the proposed standard by 2004, the Agency is seeking comment on whether it may be appropriate to allow refiners with substantial economic hardship circumstances to apply for relief from compliance with the sulfur standard for a limited time period.

Such a hardship provision would need to contain appropriate criteria to limit the provision to a narrowly drawn set of circumstances. This might include criteria such as ability to raise capital to make necessary refinery investments in time for 2004, given the current size and ownership of the refinery, the physical characteristics of the refinery, the volume of gasoline at issue, ability to purchase credits to comply, and any efforts by the refiner to limit sulfur that are already underway or have been attempted. The provision would also need to contain criteria to ensure that it would not undermine the emissions reduction goals of the Tier 2/sulfur program and would not allow large amounts of gasoline with sulfur levels significantly above 30 ppm into the market. For example, this might include a volume limit on the use of less stringent standards in hardship circumstances. It would also need to include an endpoint, so that the relief is short-term and the refinery would then have to meet the same standard as all other refineries. For example, EPA would not expect that hardship relief will be needed beyond 2009.

Under such a provision, we expect that refiners would be subject to a reasonable level of control, albeit less stringent than the proposed standards. At a minimum, sulfur levels at a particular refinery should not be permitted to be higher than 1997–1998 baseline levels and in no event should the average sulfur level be greater than 300 ppm. EPA also seeks comment on the appropriate time frame for allowing relief in hardship circumstances. EPA solicits comments on whether any refiners would encounter significant

hardship in meeting the proposed standard. EPA solicits comment on the implications of any such hardship provision on small refiners and its relationship to the small refiner provisions proposed in this document. Finally, EPA seeks comment on the implications of a hardship provision on the proposed ABT program.

5. Consideration of Diesel Fuel Control

As explained in Section IV.B. above, the proposed Tier 2 standards would apply to both gasoline- and diesel fuel-fueled vehicles. Currently very few light-duty vehicles operate on diesel fuel. Given what we know about gasoline vehicles, we believe it is reasonable to anticipate that the use of exhaust aftertreatment devices may be required, and that these technologies may have similar sensitivities to sulfur that the catalysts used on gasoline engines have. However, we do not yet have enough information to be able to conclude that diesel sulfur levels need to be reduced in the same time frame that Tier 2 vehicles are introduced. A decision to require reductions in diesel sulfur levels could have significant implications for the refining industry, both because it would likely require capital expenditures over and above the significant costs that would be incurred in controlling gasoline sulfur, and because for some refiners concurrent control of gasoline and diesel sulfur may be the most economical solution. Hence, due to the implications for automotive manufacturers and for diesel fuel producers, a decision on whether to require diesel fuel sulfur reductions needs to be made as soon as possible.

Automobile and diesel engine manufacturers and state air quality agencies have recently asked us to set new fuel quality requirements for diesel fuel used in highway vehicles.⁶⁴ The manufacturers believe that such requirements, especially controlling diesel fuel sulfur content to very low levels, could produce large environmental benefits by enabling dramatically lower-emitting diesel engines equipped with exhaust aftertreatment devices. The viability of such technologies would, of course,

affect the feasibility of the proposed Tier 2 emission standards for diesel vehicles. Currently, highway diesel fuel is regulated under standards we set in 1990. These standards, which became effective in 1993, limit the concentration of sulfur in diesel fuel to a maximum of 500 ppm; they also control the amount of aromatic compounds in the fuel (55 FR 34120, August 21, 1990).

Diesel engine manufacturers have argued that implementing Tier 2 standards without concurrent diesel fuel changes would be unfair to diesels because diesel fuel quality is worse than gasoline fuel quality, especially considering that the Tier 2 rulemaking includes proposed improvements in gasoline quality to enable advanced three-way catalytic converters. Some argue that, beyond fuel-neutrality considerations, diesel fuel quality improvement is needed to combat global warming because it will facilitate the marketing of more diesel vehicles and, in their opinion, thereby reduce emissions of global warming gases. Others counter that such benefits are illusory and that diesel vehicles should be discouraged because diesel exhaust is a serious health hazard, a hazard that improvements in fuel quality would do little to mitigate.

To address the issue of diesel fuel changes, we will issue an Advance Notice of Proposed Rulemaking (ANPRM) in the near future. We encourage interested parties to review and comment on the issues raised in the ANPRM. On the basis of this information, if appropriate, we plan to publish a proposal on standards for diesel fuel in the next several months. This would provide some degree of clarity regarding our plans in this area in time to help affected industries to then make their own plans without undue disruption. This is especially important for the petroleum refining industry in planning capital outlays to accomplish sulfur reduction in gasoline, and potentially diesel fuel, at the most economical point in the refining process.

Several diesel vehicle manufacturers have raised the concern that unless or until lower sulfur diesel fuel is available, the sulfate component of diesel PM may be particularly difficult to control to very low emission levels. They have encouraged us to express the proposed PM standards in terms of non-sulfate PM to provide manufacturers flexibility in how they balance the control of sulfate and non-sulfate PM components.

⁶⁴ See the following contained in the docket for this rulemaking: Letter from Robert J. Eaton, Chrysler Corporation, Alex Trotman, Ford Motor Company and John F. Smith, Jr., General Motors Corporation, to Vice President Al Gore, July 16, 1998; "STAPPA/ALAPCO Resolution on Sulfur in Diesel Fuel," October 13, 1998; Letter from S. William Becker, Executive Director of STAPPA/ALAPCO, to Carol Browner, Administrator of U.S. EPA, October 16, 1998; Letter from Jed R. Mandel, Engine Manufacturers Association, to Margo T. Oge, Director, Office of Mobile Sources, EPA, November 6, 1998.

We request comment on such an approach, including specific comments on the following:

- Whether or not such an approach could be justified on an air quality basis, given the potential for very high sulfate PM emissions due to unrestrained sulfate production in diesel catalytic converters;
- Whether such an approach should be limited to the interim PM standards and be discontinued when the Tier 2 standards are fully phased in;
- How this approach should be phased out if low-sulfur diesel fuel were to be phased in; and
- Whether a cap on sulfate PM should accompany such an approach and what value (in grams per mile) would be appropriate for a cap.

D. What Are the Economic Impacts, Cost Effectiveness and Monetized Benefits of the Proposal?

Consideration of the economic impacts of new standards for vehicles and fuels has been an important part of our decision making process for this proposal. The following sections describe first the costs associated with meeting the new vehicle standards and the new fuel standards. This will be followed with a discussion of the cost effectiveness of the proposal. Lastly, we will discuss the results of a preliminary benefit-cost assessment that we have prepared.

Full details of our cost analyses, including information not presented here, can be found in the Draft RIA associated with this rule. We invite comments on all aspects of these analyses.

1. What Are the Estimated Costs of the Proposed Vehicle Standards?

To perform a cost analysis for the proposed standards, we first determined a package of likely technologies that manufacturers could use to meet the proposed standards and then determined the costs of those technologies. In making our estimates we have relied both on publicly available information, such as that developed by California, and confidential information supplied by individual manufacturers.

In general, we expect that the Tier 2 standards will be met through refinements of current emissions control components and systems rather than through the widespread use of new technology. Furthermore, lighter vehicles will generally require less extensive improvements than larger vehicles and trucks. More specifically, we anticipate a combination of

technology upgrades such as the following:

- Improvements to the catalyst system design, structure, and formulation plus some increase in average catalyst size and loading.
- Air and fuel system modifications including changes such as improved microprocessors, improved oxygen sensors, leak free exhaust systems, air assisted fuel injection, and calibration changes including improved precision fuel control and individual cylinder fuel control.
- Engine modifications, possibly including an additional spark plug per cylinder, an additional swirl control valve, or other hardware changes needed to achieve cold combustion stability.
- Increased use of fully electronic exhaust gas recirculation (EGR).
- Increased use of secondary air injection for 6 cylinder and larger engines.
- Heat optimized exhaust pipes and low thermal capacity manifolds.

Using a typical mix of changes for each group, we projected costs separately for LDVs, the different LDT classes, and for different engine sizes (4, 6, 8-cylinder) within each class. For each group we developed estimates of both variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification).

Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near-term. For the longer term, we have identified factors that would cause cost impacts to decrease over time. First, since fixed costs are assumed to be recovered over a five-year period, these costs disappear from the analysis after the fifth model year of production. Second, the analysis incorporates the expectation that manufacturers and suppliers will apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.⁶⁵ These reductions in production costs are typically associated with every doubling of production volume. Our analysis incorporates the effects of this "learning

curve" by projecting that the variable costs of producing the Tier 2 vehicles decreases by 20 percent starting with the third year of production. We applied the learning curve reduction only once since, with existing technologies, there would be less opportunity for lowering production costs than would be the case with the adoption of new technology.

We have prepared our cost estimates for meeting the Tier 2 standards using a baseline of NLEV technologies for LDVs, LDT1s, and LDT2s, and Tier 1 technologies for LDT3s and LDT4s. These are the standards that vehicles would be meeting in 2003.⁶⁶ We have not specifically analyzed smaller incremental changes to technologies that might occur due to the interim standards between the baseline and Tier 2. In many cases, we believe these changes will not be significant based on current certification levels. For others, manufacturers can use averaging and other program flexibilities to avoid redesigning vehicles twice within a relatively short period of time. We believe this is likely to be an attractive approach for manufacturers due to the savings in R&D and other resources.

For the total annual cost estimates, we projected that manufacturers will start the phase-in of Tier 2 vehicles with LDVs in 2004 and progress to heavier vehicles until all LDT2s meet Tier 2 standards in 2007. For LDT3s and LDT4s, we projected some sales of Tier 2 LDT3s prior to 2008 for purposes of averaging in the interim program and that the phase-in of Tier 2 vehicles would end with LDT4s in 2009.

Finally, we have incorporated what we believe to be a high level of R&D spending at \$5,000,000 per vehicle line (with annual sales of 100,000 units per line). We have included this large R&D effort because calibration and system optimization is likely to be a critical part of the effort to meet Tier 2 standards. However, we believe that the R&D costs may be overstated because the projection ignores the carryover of knowledge from the first vehicle lines designed to meet the standard to others phased-in later.

The evaporative emissions standards we are proposing today for LDVs and LDTs are feasible with relatively small cost impacts. We estimate the cost of system improvements to be about \$4 per vehicle, for all vehicle classes. This incremental cost reflects the cost of moving to low permeability materials, improved designs or low-loss

⁶⁵ "Learning Curves in Manufacturing," Linda Argote and Dennis Epple, *Science*, February 23, 1990, Vol. 247, pp. 920-924.

⁶⁶ Even though the NLEV program ends in the Tier 2 time frame, we have not included the NLEV program costs or benefits in our analysis, since EPA analyzed and adopted NLEV previously.

connectors. R&D for the evaporative emissions standard is included in the R&D estimates given above for the tailpipe standards. We have made no projections of learning curve reductions for the evaporative standard.

Table IV.D.-1 provides our estimates of the per vehicle increase in purchase price for LDVs and LDTs. The near-term cost estimates in Table IV.D.-1 are for the first years that vehicles meeting the standards are sold, prior to cost reductions due to lower productions

costs and the retirement of fixed costs. The long-term projections take these cost reductions into account. We have sales weighted the cost differences for the various engine sizes (4-, 6-, 8-cylinder) within each category.

TABLE IV.D.-1.—ESTIMATED PURCHASE PRICE INCREASES DUE TO PROPOSED TIER 2 STANDARDS

	LDV	LDT1	LDT2	LDT3	LDT4
Tailpipe standards:					
Near-term (year 1)	\$76	\$69	\$132	\$270	\$266
Long-term (year 6 and beyond)	46	43	99	214	209
Evaporative Standard	4	4	4	4	4

2. What Are the Estimated Costs of the Proposed Gasoline Sulfur Standards?

As explained in Section IV.C., most refiners will have to install capital equipment to meet the proposed gasoline sulfur standard. Presuming that refiners will want to minimize the cost involved, refiners are expected to desulfurize the gasoline blendstock produced by the fluidized catalytic cracker (FCC) unit. Recent advances have led to significant improvements in hydrotreating technology by CDTECH and Mobil Oil (OCTGAIN) that lower the cost of desulfurizing FCC gasoline; we understand that similar technologies are being developed by other parties. Since these improved desulfurization technologies represent the lowest cost options and are expected to be used by most refiners needing to install desulfurization equipment, we estimated the cost of desulfurization based on their use.

For our analysis, we estimated the cost of lowering gasoline sulfur levels in five different regions of the country (Petroleum Administration Districts for Defense, or PADD), starting from the current regional average in each PADD down to 30 ppm. We then converted the regional cost to a national average per-refinery cost, and calculated a national aggregate cost and cents-per-gallon cost.

Based on this analysis we estimate that, on average, refiners in the year 2004 would be expected to invest about \$45 million for capital equipment and spend about \$16 million per year for each refinery to cover the operating costs associated with these desulfurization units. Since this average represents many refineries diverse in size and gasoline sulfur level, some refineries would pay more and others less than the average costs. When the average per-refinery cost is aggregated for all the gasoline expected to be produced in this country in 2004, the total investment for desulfurization processing units is estimated to be about \$4.7 billion dollars, and operating costs

for these units is expected to be about \$1.5 billion per year. We believe that the \$4.7 billion in capital costs would be spread over several years by the refiners' participation in the proposed averaging, banking, and trading program.

These capital and operating costs represent our estimates for domestic costs. While we think that many foreign refiners might incur capital costs to meet the requirements of our gasoline sulfur program, particularly in light of similar programs being enacted internationally, others will argue that most foreign refiners would not incur new costs as a result of our program because they can simply send the lowest-sulfur fraction of their current production to the U.S. Furthermore, some will argue that most foreign refiners do not face the same permitting limitation and environmental and other regulatory costs that domestic refiners face, and thus that their costs of producing low sulfur gasoline will be minimal even if some investment is required. While we have developed cost estimates with and without consideration of possible costs attributed to imported gasoline, our estimates of national and average costs do not include any costs attributed to foreign refiners.

Using our estimated capital and operating costs we calculated the average per-gallon cost of reducing gasoline sulfur down to 30 ppm. Using a capital cost amortization factor based on a seven percent rate of return on investment, and including no taxes, we estimated the average national cost for desulfurizing gasoline to initially be about 1.7 cents per gallon. This cost is the cost to society of reducing gasoline sulfur down to 30 ppm that we used for estimating cost effectiveness. If we amortize the costs based on a rate of return on investment of six to ten percent and a tax rate of 39 percent, which may more closely represent the actual economic situation facing refiners today, the average national cost for

desulfurizing gasoline down to 30 ppm would be 1.7–1.9 cents per gallon.

We anticipate that these costs will decrease in future years due to improvements in technology, similar to the learning curve improvements discussed above for vehicle cost. This improvement is estimated to result in a 20 percent reduction in operating costs after the second complete year of use. This estimated rate of improvement is similar to previous cost reductions observed with desulfurization technologies as they were being developed.

Additional cost reduction is expected as refiners increase the throughput (debottleneck) of their refineries to lower their per-gallon fixed costs. This increase in throughput for the industry as a whole is termed capacity creep and it is has allowed a shrinking number of U.S. refineries to handle the increasing demand for refined products. Our analysis presumes that as an industry, refiners will debottleneck their refineries at a rate consistent with the forecasted increase in gasoline demand, which is about 2 percent per year. Thus, the fixed operating cost, and a portion of the capital costs for these desulfurization technologies, would decrease over time on a per gallon basis as the volume of gasoline processed at each refinery increased.

Table IV.D.-2 below summarizes our estimates of per-gallon gasoline cost increases for the years 2004, 2010 and 2015.

TABLE IV.D.-2.—ESTIMATED PER-GALLON COST FOR DESULFURIZING GASOLINE IN FUTURE YEARS

Year	Cost (cents/gallon)
2004	1.7
2010	1.5
2015	1.4

3. What Are the Aggregate Costs of the Tier 2/Gasoline Sulfur Proposal?

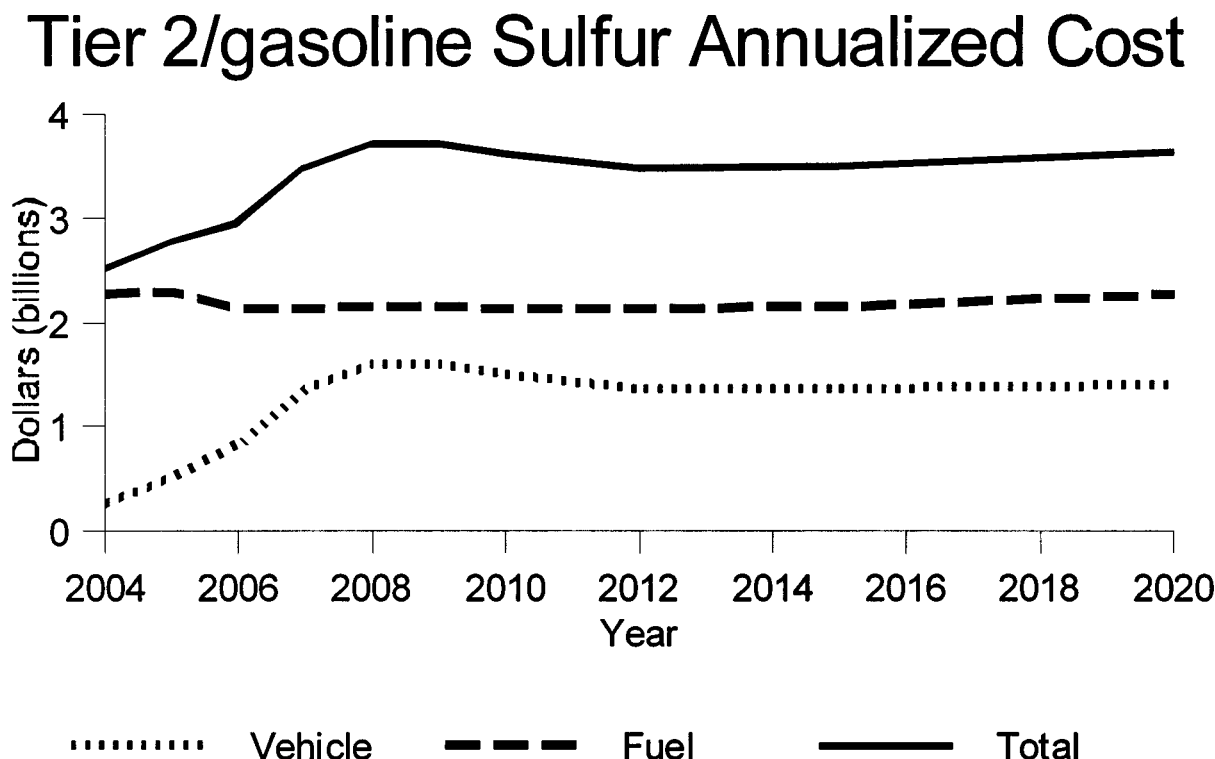
Using current data for the size and characteristics of the vehicle fleet and

making projections for the future, the per-vehicle and per-gallon fuel costs described above can be used to estimate the total cost to the nation for the

proposed emission standards in any year. Figure IV.D.-1 portrays the results of these projections.⁶⁷

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Figure IV.D. -1



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As can be seen from the figure, the annual cost starts out at just over \$2.5 billion per year and increases over the phase-in period to a maximum of \$3.7 billion in 2008. Thereafter, the annual cost declines to a level of about \$3.5 billion. The effect of projected growth in vehicle sales and fuel consumption causes a slow, gradual rise in annual cost to set in after about 2012.

4. How Does the Cost Effectiveness of This Program Compare to Other Programs?

This section summarizes the cost effectiveness analysis done by EPA and its results. The purpose of this assessment is to determine whether reductions from the vehicle and fuel controls are cost effective, taking into consideration alternative means of attaining or maintaining the national

primary ambient air quality standards. This involves a comparison of our proposed program not only with past measures, but with other new measures that might be employed to attain and maintain the NAAQS. Both EPA and states have already adopted numerous control measures, and remaining measures tend to be more expensive than those previously employed. Therefore, there is no single cost effectiveness level that defines what is acceptable. Rather, as we employ the most cost effective available measures first, more expensive ones tend to become necessary over time.

⁶⁷ Figure IV.D.-1 is based on the amortized costs from Tables IV.D.-1 and IV.D.-2. Actual capital investments, particularly important for fuels, would occur prior to and during the initial years of the program, as described above in section IV.D.2.

a. *What Is the Cost Effectiveness of This Program?* We have calculated the per-vehicle cost effectiveness of the exhaust/gasoline sulfur standards and the evaporative emission standards, based on the net present value of all costs and emission reductions over the life of an average Tier 2 vehicle subject to today's proposal. As described earlier in the discussion of the cost of this proposal, the cost of complying with the new standards will decline over time as manufacturing costs are reduced and amortized capital investments are recovered. To show the effect of declining cost on the cost effectiveness, we have developed both near term and long term cost effectiveness values. More specifically, these correspond to

vehicles sold in years one and six of the vehicle and fuel programs. Vehicle cost is constant from year six onward. Fuel costs per gallon continue to decline slowly in the years past year six; however, the overall impact of this decline is small and we have decided to use year six results for our long term cost effectiveness. Chapter V of the draft RIA contains a full description of this analysis, and you should look in that document for more details on the results summarized here.

Table IV.D.-3 summarizes the net present value lifetime cost, NMHC + NO_x emission reduction and cost

effectiveness results for the Tier 2/ gasoline sulfur proposal using sales weighted averages of the costs (both near term and long term) and emission reductions of the various vehicle classes affected.

Table IV.D.-3 also displays cost effectiveness values based on two approaches to account for the small reductions in SO₂ and tailpipe emitted sulfate particulate matter (PM) associated with the reduction in gasoline sulfur. While these reductions are not central to the proposal and are therefore not displayed with their own cost effectiveness, they do represent real

emission reductions due to the proposed rule. The first set of cost effectiveness numbers in Table IV.D.-3 simply ignores these reductions and bases the cost effectiveness on only the NMHC + NO_x reductions from Tier 2/ gasoline sulfur. The second set accounts for these reductions by crediting some of the cost of the program to SO₂ and PM reduction. The amount of cost allocated to SO₂ and PM is based on the cost effectiveness of SO₂ and PM emission reductions from other EPA actions. You may refer to the RIA for details about these actions and how the specific allocations were developed.

TABLE IV.D.-3.—COST EFFECTIVENESS OF THE PROPOSED STANDARDS (1997 DOLLARS)

Cost basis	Discounted lifetime vehicle and fuel costs	Discounted lifetime NMHC + NO _x reduction (tons)	Discounted lifetime cost effectiveness per ton	Discounted lifetime cost effectiveness per ton with SO ₂ and direct PM credit ^a
Near term cost (production year 1)	\$230	0.108	\$2,134	\$1,599
Long term cost (production year 6)	188	0.109	1,748	1,213

^a \$54 credited to SO₂ (\$4800/ton), \$4 to direct PM (\$10,000/ton).

b. *How Does the Cost Effectiveness of this Program Compare with Other Means of Obtaining Mobile Source NO_x + NMHC Reductions?* In comparison with other mobile source control programs, we believe that today's proposal represents the most cost effective new mobile source control strategy currently available that is capable of generating substantial NO_x + NMHC reductions. This can be seen by comparing the cost effectiveness of today's program with a number of new mobile source standards that EPA has adopted in recent years. Table IV.D.-4 summarizes the cost effectiveness of several recent EPA actions.

TABLE IV.D.-4.—C/E OF PREVIOUSLY IMPLEMENTED MOBILE SOURCE PROGRAMS

Program	\$/ton NO _x +NMHC
2004 Highway HD Diesel stds	300
Nonroad Diesel engine stds	410-650
Tier 1 vehicle controls	1,980-2,690
NLEV	1,859
Marine SI engines	1,128-1,778
On-board diagnostics	2,228

(Costs adjusted to 1997 dollars.)

We can see from the table that the cost effectiveness of the Tier 2/gasoline sulfur standards falls within the range of these other programs. Engine-based standards (the 2004 highway heavy-duty diesel standards, the nonroad diesel engine standards and the marine spark-

ignited engine standards) have generally been less costly than Tier 2/gasoline sulfur. Vehicle standards, most similar to today's proposal, have values comparable to or higher than Tier 2/ gasoline sulfur.

It is tempting to look at the engine standards and conclude that more reductions at a similar low cost effectiveness should still be available. This is especially true for the two largest categories (highway and nonroad diesel engines) where new standards have been adopted that were highly cost effective. However, cost effectiveness was not a limiting consideration in either case. Rather, the level of the standards selected was based primarily on technical feasibility in the time available. That is, the maximum level of control that we found to be feasible in these actions was driven more by what technology we believed would be available than by cost. It will be important to consider the potential for further control in these categories as we move forward.

We do not believe that significant further control is available from highway or nonroad diesel engines through more stringent standards at the same cost effectiveness that these standards realized, in the time frame proposed. Based on current knowledge, the next generation of controls for these diesel engines would require advanced after-treatment devices, still in the research and development phase. Such controls have not yet been employed

and when they become available will be more costly and will have difficulty functioning without changes to diesel fuel. We fully expect that, as the development of new technology progresses and cost declines, future new standards for both of these source categories will be developed. But we also expect that the cost effectiveness of future standards will be higher and is not likely to be significantly less than the cost effectiveness of today's proposal.

On the light duty vehicle side, the last two sets of standards were Tier 1 and NLEV, which had cost effectiveness comparable to or higher than Tier 2/ gasoline sulfur. Compared to engines, these levels reflect the advanced (and more expensive) state of vehicle control technology, where standards have been in effect for a much longer period than for engines. In fact, considering the increased stringency of the Tier 2 standards,⁶⁸ it is remarkable that the cost effectiveness of Tier 2/gasoline sulfur is in the same range as these actions. Based on these results, Tier 2/ gasoline sulfur appears to be a logical and consistent next step in vehicle control.

In conclusion, we believe that the Tier 2/gasoline sulfur proposal is a cost effective program for mobile source NO_x + NMHC control. We are unable to

⁶⁸ Tier 2/gasoline sulfur will yield about a 75% reduction in NO_x emissions compared to NLEV vehicles.

identify another mobile source control program that would be more cost effective than Tier 2/gasoline sulfur for making substantial further progress in reducing NO_x + NMHC emissions.

c. *How Does the Cost Effectiveness of this Proposed Program Compare with Other Known Non-Mobile Source Technologies for Reducing NO_x + NMHC?* In evaluating the cost effectiveness of the Tier 2/gasoline sulfur proposal, we also considered whether our proposal is cost effective in comparison with alternative means of attaining or maintaining the NAAQS other than mobile source programs. As described below, we have concluded that Tier 2/gasoline sulfur is cost effective considering the anticipated cost of other technologies that will be needed to help attain and maintain the NAAQS.

For purposes of estimating the cost of implementing the new ozone and PM NAAQS, the Agency assumed certain baseline controls and compiled a list of additional known technologies that could be considered in devising emission reductions strategies.⁶⁹ Through this broad review, over 50 technologies were identified as reducing NO_x or VOC. The average cost effectiveness of these technologies varied from hundreds of dollars a ton to tens of thousands of dollars a ton. The Agency selected from this list all those technologies that could be applied with an average cost effectiveness of \$10,000/ton or less, and showed that substantial progress toward attainment could be made when operating within that limit.

While many areas still remained in nonattainment under the NAAQS analysis, we assumed that other methods would be identified in the future that on average could help achieve the NAAQS at \$10,000 per ton or less. We believe that Tier 2/gasoline sulfur is one of those methods. In fact, it will deliver critical further reductions that are not readily obtainable by any other means known to the Agency. By way of comparison, if all of the technologies identified for the NAAQS analysis costing less than \$10,000/ton were implemented nationwide, they would produce NO_x emission reductions of about 2.9 million tons per year. The Tier 2/gasoline sulfur proposal by itself will generate about 2.8

million tons per year once fully implemented. To obtain significant further reductions using the other technologies identified in the NAAQS analysis rather than Tier 2/gasoline sulfur could mean adopting measures costing well beyond \$10,000/ton. Given the continuing need for further emission reductions, we believe that Tier 2/gasoline sulfur control is clearly a cost effective approach, in addition to those technologies assumed for the NAAQS analysis, for attaining and maintaining the NAAQS.

We recognize that the cost effectiveness calculated for Tier 2/gasoline sulfur is not strictly comparable to a figure for measures targeted at nonattainment areas, since Tier 2/gasoline sulfur is a nationwide program. However, there are several additional considerations that have led us to conclude that Tier 2/gasoline sulfur is cost effective considering alternative means of attaining and maintaining the NAAQS.

First, given the fact that Tier 2/gasoline sulfur is at most only 20 percent as costly per ton as the NAAQS figure for additional control measures, we believe that there can be little doubt that the cost effectiveness of Tier 2/gasoline sulfur is well within the cost effectiveness range that the NAAQS cost analysis anticipated for unspecified additional technologies that will be needed to attain the NAAQS—technologies that the analysis noted might be applied in limited areas or nationwide. Furthermore, as a national program, Tier 2/gasoline sulfur can be implemented as a single unified rule without the need for individual action by each of the states. Moreover, as noted above, for states to obtain further substantial emission reductions beyond those identified in the NAAQS could mean adopting measures costing well beyond \$10,000/ton, something that few areas of the country to date have done.

In dealing with the question of comparing local and national programs, it is also relevant to point out that, because of air transport, the need for NO_x control is a broad regional issue not confined to non-attainment areas only. To reach attainment, future controls will need to be applied over widespread areas of the country. In the analyses supporting the recent NO_x standards for highway diesel engines,⁷⁰ we looked at this question in some detail and concluded that the regions expected to impact ozone levels in ozone nonattainment areas accounted

for over 85% of total NO_x emissions from a national heavy-duty engine control program. Similarly, NO_x emissions in attainment areas also contribute to particulate matter nonattainment problems in downwind areas. Thus, the distinction between local and national control programs for NO_x is less important than it might appear.

Finally, the statute indicates that in considering the cost effectiveness of Tier 2/gasoline sulfur EPA should consider not only attainment, but also maintenance of the standards. Tier 2/gasoline sulfur—unlike nonattainment area measures—will achieve attainment area reductions that, among other effects, will help to maintain air quality that meets the NAAQS. These reductions relate not only to the ozone and PM NAAQS, but also to SO₂ and NO₂, and to CO.

In summary, given the array of controls that will have to be implemented to make progress toward attaining and maintaining the NAAQS, we believe that the weight of the evidence from alternative means of providing substantial NO_x + NMHC emission reductions indicates that the Tier 2/gasoline sulfur proposal is cost effective. This is true from the perspective of other mobile source control programs or from the perspective of other stationary source technologies that might be considered.

5. Does the Value of the Benefits Outweigh the Cost of the Proposed Standards?

While relative cost effectiveness is the principal economic policy criterion established for these standards in the Clean Air Act (see CAA 202(i)), further insight regarding the merits of the proposed standards can be provided by benefit-cost analysis. The purpose of this section is to summarize the methods we used and results we obtained in conducting a preliminary analysis of the economic benefits of the proposed standards, and to compare these economic benefits with the estimated costs of the proposal. In summary, the results of our analysis indicate that the economic benefits of the proposed standards will likely exceed the costs of meeting the standards by a substantial margin, and the significant uncertainties underlying the analysis are unlikely to alter this outcome of positive net benefits.

a. *What Is the Purpose of this Benefit-Cost Comparison?* Benefit-cost analysis (BCA) is a useful tool for evaluating the economic merits of proposed changes in environmental programs and policies. In its traditional application, BCA

⁶⁹ "Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule," Appendix B, "Summary of control measures in the PM, regional haze, and ozone partial attainment analyses," Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC, July 17, 1997.

⁷⁰ Final Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines, September 16, 1997.

estimates the economic "efficiency" of proposed changes in public policy by organizing the various expected consequences and representing those changes in terms of dollars. Expressing the effects of these policy changes in dollar terms provides a common basis for measuring and comparing these various effects. Because improvement in economic efficiency is typically defined to mean maximization of total wealth spread among all members of society, traditional BCA must be supplemented with other analyses in order to gain a full appreciation of the potential merits of new policies and programs. These other analyses may include such things as examinations of legal and institutional constraints and effects; engineering analyses of technology feasibility, performance and cost; or assessment of the air quality need.

In addition to the narrow, economic efficiency focus of most BCAs, the technique is also limited in its ability to project future economic consequences of alternative policies in a definitive way. Critical limitations on the availability, validity, or reliability of data; limitations in the scope and capabilities of environmental and economic effect models; and controversies and uncertainties surrounding key underlying scientific and economic literature all contribute to an inability to estimate the economic effects of environmental policy changes in exact and unambiguous terms. Under these circumstances, we consider it most appropriate to view BCA as a tool to inform, but not dictate, regulatory decisions such as the ones reflected in today's proposal.

Despite the limitations inherent in BCA of environmental programs, we considered it useful to estimate the potential benefits of today's proposed standards both in terms of physical changes in human health and welfare and environmental change, and in terms of the estimated economic value of those physical changes. The BCA presented herein should be considered preliminary, however, due to limitations in the data and models available for analysis in advance of today's proposal. Additional, more refined analysis will be conducted prior to issuance of final standards. This post-proposal analysis will take account of public comments on the proposed standards and this BCA and will also make use of more extensive and refined data and models currently being developed. Our expectation is that the more extended and refined economic analysis conducted prior to final rulemaking will further help inform and guide decisions on the appropriateness of the final rules.

Toward this end, we are presenting this preliminary BCA and requesting public comments on the assumptions, data, and modeling efforts supporting the analysis and its results, and the appropriate interpretations and uses of those results.

b. *What Was Our Overall Approach to the Benefit-Cost Analysis?* The basic question we sought to answer in the preliminary BCA was: "What are the net yearly economic benefits to society of the reduction in mobile source emissions likely to be achieved by today's proposed standards?" In designing an analysis to answer this question, we adopted an analytical structure and sequence similar to that used in the so-called "section 812 studies"⁷¹ to estimate the total benefits and costs of the entire Clean Air Act. Moreover, we used many of the same data sets, models, and assumptions actually used in the Section 812 studies and/or the recent Regulatory Impact Analyses (RIAs) for the Particulate Matter and Ozone National Ambient Air Quality Standards and for the NO_x SIP Call (also known as the Regional Ozone Transport Rule, as discussed in Section III above).⁷² By adopting the major design elements, data sets, models, and assumptions developed for the recent RIAs, we have largely relied on methods that have already received extensive review by the public and by other federal agencies. Furthermore, the data sets adopted from the Section 812 studies have received extensive review by the independent Science Advisory Board and by the public.

As described in more detail in the Draft RIA for today's proposal, this overall analytical design involves the following sequential steps:

1. Identify the *technologies* likely to be used to comply with the proposed standards
2. Estimate the *costs* society would incur to employ the technologies
3. Estimate the *emissions reductions* achieved by application of the technologies
4. Estimate the change in *air quality* conditions resulting from the estimated emissions reductions
5. Estimate the changes in *human health and well-being and environmental quality* associated with the estimated changes in air quality

⁷¹ The "section 812 studies" refers to (1) USEPA, Report to Congress: The Benefits and Costs of the Clean Air Act, 1970 to 1990, October 1997 (also known as the "section 812 Retrospective"); and (2) the first in the ongoing series of prospective studies estimating the total costs and benefits of the Clean Air Act, expected to be published later in 1999.

⁷² Regulatory Impact Analysis for the NO_x SIP Call, FIP, and Section 126 Petitions" September 1998, EPA-452/R-98-003.

6. Estimate the *economic value* of the estimated changes in human health, human welfare, and environmental outcomes

7. Compare the resulting estimate of economic benefits with the estimated costs, and calculate the *net monetized benefits* of the proposed standards

8. Evaluate the *uncertainty* surrounding the estimate of net monetized benefit by developing ranges of results that reflect the key underlying scientific, economic, data, and modeling uncertainties

c. *What Are the Significant Limitations of the Benefit-Cost Analysis?* Every BCA examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon models. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes that can be quantified, such as changes in lung function caused by increased exposure to ozone. While these general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references, the key uncertainties that have a bearing on the results of the preliminary BCA of today's proposed standards are:

1. The exclusion of potentially significant benefit categories (e.g., health and ecological benefits of incidentally controlled hazardous air pollutants)
2. Scientific uncertainties regarding whether the observed statistical relationship between exposure to elevated particulate matter and incidences of adverse health effects reflects a causal relationship (especially premature mortality and chronic bronchitis)
3. Scientific uncertainty regarding the potential existence of a concentration threshold below which adverse health effects of exposure to particulate matter might not occur
4. Scientific uncertainty regarding whether tropospheric ozone exposure contributes to premature mortality

In addition to these uncertainties and shortcomings that pervade all analyses of criteria air pollutant control

programs, a number of limitations apply specifically to the preliminary BCA of today's proposed rules. Though we used the best data and models currently available, we were required to adopt a number of simplifying assumptions and to use data sets that, while reasonably close, did not match precisely the conditions and effects expected to result from implementation of the standards proposed today. For example, the year 2010 emissions data sets available for use in this analysis do not fully reflect the emissions reductions expected to be achieved by other recently-enacted standards and by expected near-future control programs, such as additional measures aimed at full attainment of the new fine particulate matter National Ambient Air Quality Standards. In addition, we have used the year 2010 as a proxy for the time (actually circa 2040) when all non-complying vehicles would be fully retired from the fleet and full implementation of today's proposed standards would be finally achieved, requiring adjustments described more fully in the next section. The key limitations and uncertainties unique to the preliminary BCA of today's proposed rules, therefore, include:

1. A mismatch between the 2010 air quality base year adopted for the BCA and the eventual timing of fleet turnover
2. Potential mis-estimation of future year emissions inventories, such as those associated with nonroad vehicle emissions and with measures aimed at attaining and maintaining compliance with newly revised ambient air quality standards

3. Uncertainties associated with the extrapolation of air quality monitoring data to distant sites required to capture the effects of the proposed standards on all affected populations

Despite these additional important uncertainties, which are discussed in more detail or referenced in the Draft RIA, we believe the preliminary BCA does provide a reasonable indication of the potential range of net economic benefits of the standards proposed today. This is because the analysis focuses on estimating the economic effects of the *changes* in air quality conditions expected to result from today's proposed rules, rather than focusing on developing a precise prediction of the *absolute* levels of air quality likely to prevail at some particular time in the future. An analysis focusing on the changes in air quality can give useful insights into the likely economic effects of emission reductions of the magnitude expected to result from today's proposed rule.

d. *How Did We Perform the Benefit-Cost Analysis?* As summarized above,

the analytical sequence begins with a projection of the mix of technologies likely to be deployed to comply with the new standards, and the costs incurred and emissions reductions achieved by these changes in technology. The program proposed today has various cost and emission related components, as described earlier in this section. These components would begin at various times and in some cases would phase in over time. This means that during the early years of the program there would not be a consistent match between cost and benefits. This is especially true for the vehicle control portions of the proposal, where the full vehicle cost would be incurred at the time of vehicle purchase, while the fuel cost along with the emission reductions and benefits would occur throughout the lifetime of the vehicle. To deal with this question, we might have wished to perform a per-vehicle analysis corresponding to the cost effectiveness analysis described above. However, the modeling used for benefits estimates cannot be done on a per-vehicle basis, so we have instead used an annual cost and annual benefit approach.

To develop a representative benefit-cost number, we need to have a stable set of cost and emission reductions to use. This means using a future year where the fleet is fully turned over and there is a consistent annual cost and annual emission reduction. For today's proposal this stability wouldn't occur until well into the future. However, for the purpose of the benefit calculations, we have no available baseline data set beyond the year 2010. We have therefore made adjustments to allow use of 2010 as a surrogate for a future year in which the fleet consists entirely of Tier 2 vehicles.

For emissions, we calculated reductions by treating 2010 as if the fleet had already turned over. We did this by applying the control case emission factor from a fully turned over fleet year (from the year 2040) to the fleet mileages for this year. Clearly, this approach does not, nor is it intended to, predict actual expected emission reductions for 2010. This is not its purpose. It is intended to portray the characteristics of the vehicle fleet after it is fully turned over, within the constraint that 2010 was the latest year for which we could perform an analysis.

The resulting analysis represents a snapshot of benefits and costs in a future year in which the light-duty fleet consists entirely of Tier 2 vehicles. As such, it depicts the maximum emission reductions (and resultant benefits) and among the lowest costs that would be achieved in any one year by the program

on a "per mile" basis. (Note, however, that net benefits would continue to grow over time beyond those resulting from this analysis, but only because of growth in vehicle miles traveled.) Thus, based on the long-term costs for a fully turned over fleet, the resulting benefit-cost ratio will be close to its maximum point (for those benefits that we have been able to value).

Costs to be compared to the monetized value of the benefits were also developed for a fleet the size of the year 2010 fleet. For this purpose we used the long term cost once the capital costs have been recovered and the manufacturing learning curve reductions have been realized, since this most closely represents the makeup of a fully turned over fleet.

We also made adjustments in the costs to account for the fact that there is a time difference between when some of the costs are expended and when the benefits are realized. The vehicle costs are expended when the vehicle is sold, while the fuel related costs and the benefits are distributed over the life of the vehicle. We resolved this difference by using costs distributed over time such that there is a constant cost per ton of emissions reduction and such that the net present value of these distributed costs corresponds to the net present value of the actual costs.

The resulting adjusted costs are somewhat greater than the expected actual annual cost of the program, reflecting the time value adjustment. Thus, both because of the assumption of a fully turned over fleet and because of the time value adjustment, the costs presented in this section do not represent expected actual annual costs for 2010. Rather, they represent an approximation of the steady-state cost per ton that would likely prevail in 2015 and beyond. The benefit cost ratio for the earlier years of the program would be expected to be lower than that based on these costs, since the fleet-adjusted costs are larger in the early years of the program while the benefits are smaller.

Finally, at the time that we undertook the development of the benefit estimates for this rule, we did not have quantitative estimates of the VOC emission reductions that would result from the evaporative emission standards in the proposal. Therefore, the benefit estimates do not include the value of the evaporative emission standard. Consistent with this, the program cost estimates also exclude the evaporative emission control cost. Since the evaporative emission reductions and costs are both relatively small compared to the rest of the program, they are not

expected to significantly affect the overall cost-benefit ratio.

In order to estimate the changes in air quality conditions that would result from these emissions reductions, we developed two separate, year 2010 emissions inventories to be used as inputs to the air quality models. The first, baseline inventory reflects the best available approximation of the county-by-county emissions for NO_x, NMHC, and SO₂ expected to prevail in the year 2010 in the absence of the standards proposed today. To generate the second, control case inventory, we first estimated the change in vehicle emissions, by pollutant and by county, expected to be achieved by the 2010 control scenario described above. We then took the baseline emissions inventory and subtracted the estimated reduction for each county-pollutant combination to generate the second, control case emissions inventory. Taken together, the two resulting emissions inventories reflect two alternative states of the world and the differences between them represent our best estimate of the reductions in emissions that would result from our control scenario.

With these two emissions inventories in hand, the next step was to "map" the county-by-county and pollutant-by-pollutant emission estimates to the input grid cells of two air quality models and one deposition model. The first model, called the Urban Airshed Model (UAM), is designed to estimate the tropospheric ozone concentrations resulting from a specific inventory of emissions of ozone precursor pollutants, particularly NO_x and NMHC. The second model, called the Climatological Regional Dispersion Model Source-Receptor Matrix model (S-R Matrix), is designed to estimate the changes in ambient particulate matter and visibility that would result from a specific set of changes in emissions of primary particulate matter and secondary particulate matter precursors, such as SO₂, NO_x, and NMHC. Also, separate factors relating nitrogen emissions to watershed deposition were developed using the Regional Acid Deposition Model (RADM). By running both the baseline and control case emissions inventories through these models, we were able to estimate the expected 2010 air quality conditions and the changes in air quality conditions that would result from the emissions reductions expected to be achieved by the standards proposed today.

After developing these two sets of year 2010 air quality profiles, we used the same health and environmental effect models used in the 812 studies to

calculate the differences in human health and environmental outcomes projected to occur with and without the proposed standards. Specifically, we used the Criteria Air Pollutant Modeling System (CAPMS) to estimate changes in human health outcomes, the Agricultural Simulation Model (AGSIM) to estimate changes in yields of a selected few agricultural crops, and a Household Soiling Damage function to estimate the value of reduced household soiling due to particulate matter. In addition, the benefits of reduced visibility impairment were estimated using the same overall methodology used in the 812 studies, updated to reflect recent advancements in the literature. Finally, we developed estimates of the effect of changes in nitrogen deposition to sensitive estuaries using methodologies applied in the PM/Ozone NAAQS RIA (1997) and in the recent NO_x SIP Call rulemaking. (These benefits models and methodologies are described in detail in the RIAs associated with these actions.) Several air quality-related health and environmental benefits, however, could not be calculated for the preliminary BCA of today's proposed standards. Changes in human health and environmental effects due to changes in ambient concentrations of carbon monoxide (CO), gaseous sulfur dioxide (SO₂), gaseous nitrogen dioxide (NO₂), and hazardous air pollutants could not be included, though some of these may be included in the extended analysis to be conducted for the final rule.

To characterize the total economic value of the reductions in adverse effects achieved across the lower 48 states,⁷³ we used the same set of economic valuation coefficients and models used in the section 812 studies and the recent NO_x SIP Call RIA to convert each type of adverse effect into a dollar value equivalent. The net monetary benefits of today's proposed standards were then calculated by subtracting the estimated costs of compliance from the estimated monetary benefits of the reductions in adverse health and environmental effects.

In the final step of the analysis, we estimated the range of net benefit estimates that might occur if important but uncertain underlying factors were allowed to vary. By conducting this "uncertainty analysis," we sought to demonstrate how much the overall net

benefit estimate might vary based on the particular uncertainties underlying the estimates for human health and environmental effect incidence and the economic valuation of those effects. To accomplish this, we calculated a range of possible monetized benefit estimates using two sets of assumptions surrounding the modeling techniques.

The method for presenting uncertainty, referred to here as the sensitivity approach, identifies the uncertain variables that appear to most strongly influence the overall uncertainty in the monetized benefit estimate. These included, among others, (1) The potential that a concentration threshold exists below that adverse PM-related health effects may not occur, (2) alternative methods for valuing mortality, (3) the potential contribution of tropospheric ozone to premature mortality, (4) alternative methods for valuing reduced cases of chronic bronchitis, (5) the extent to which agricultural crops included in our benefits model are resistant to damage from tropospheric ozone, (6) alternative approaches for valuing visibility. After identifying these key variables, we defined lower bound and upper bound values for each variable and combined these into a Low Case and a High Case. This approach allowed us to demonstrate the sensitivity of the total benefits to uncertainties in important variables. For example, there is no compelling scientific evidence that a PM concentration threshold exists below that adverse health effects do not occur. However, there is also no scientific evidence ruling out the potential existence of a threshold. As a result, there are no data available that would support estimating the probability that a threshold exists at any particular PM concentration. Under these circumstances, using the sensitivity approach allows us to demonstrate the effect of assuming different levels for a PM threshold.

This uncertainty calculation method does not provide a definitive or complete picture of the true range of monetized benefits estimates. This approach, as implemented in this preliminary BCA, does not reflect important uncertainties in earlier steps of the analysis, including estimation of compliance technologies and strategies, emissions reductions and costs associated with those technologies and strategies, and air quality and deposition changes achieved by those emissions reductions. Nor does this approach provide a full accounting of all potential benefits (or disbenefits) associated with the Tier 2 standards, due to data or methodological

⁷³ Though California is included based on the expectation that reductions in surrounding states will achieve some benefits in California, this analysis does not assume additional reductions in California emissions beyond those already achieved by prevailing standards.

limitations. Therefore, the uncertainty range is only representative of those benefits that we were able to quantify and monetize.

e. *What Were the Results of the Benefit-Cost Analysis?* The preliminary BCA for the proposed standards reflects a single year "snapshot" indicative of the relative yearly benefits and costs expected to be realized once the proposed standards have been fully implemented and non-compliant vehicles have all been retired. By necessity, we chose to model the year 2010 because essential data on emissions and air quality were available for this year, but not for later years, even though the complete turnover of the fleet to Tier 2 compliant vehicles will not occur until well after 2010. Consequently, these results are best viewed as a representation of yearly benefits and costs over the long-term and should not be interpreted as reflecting actual benefits and costs likely to be realized for the year 2010 itself. Benefits of the amounts shown here are likely to be realized in the 2015–2020 time frame. In reality, near-term costs will be higher than long-run costs as vehicle manufacturers and oil companies invest in new capital equipment and develop and implement new technologies. In addition, near-term benefits will be lower than long-run benefits because it will take a number of years for Tier 2-compliant vehicles to fully displace older, more polluting vehicles. However, as described earlier, we have adjusted the cost estimates upward to compensate for this discrepancy in the timing of benefits and costs and to ensure that the benefits and costs are calculated on a consistent basis. Because of this adjustment, the cost estimates also should not be interpreted as reflecting the actual costs expected to be incurred in the year 2010. Actual program costs can be found in Section IV.D.3.

Earlier in this section, we described in more detail our approach to estimating and adjusting our cost estimates, based upon the long-run costs expected to be incurred in future years after the initial capital and technology investments have been made. The resulting adjusted cost values are given in Table IV.D.–5. Since the long term costs are not representative of the per vehicle costs in the early phases of the program, we also estimated an adjusted cost based on the near term cost effectiveness value. Using the near term cost effectiveness value of \$2134/per ton, the adjusted cost would be \$4.3 billion. While no actual in-use fleet could consist entirely of vehicles experiencing this near term cost, this value does present an upper bound on the cost figure.

TABLE IV.D.–5.—ADJUSTED COST FOR COMPARISON TO BENEFITS

Cost basis	Adjusted cost (billions of dollars)
Long term	3.5

With respect to the benefits, several different measures of benefits can be useful to compare and contrast to the estimated compliance costs. These benefit measures include: (a) The tons of emissions reductions achieved, (b) the reductions in incidences of adverse health and environmental effects, and (c) the estimated economic value of those reduced adverse effects. Calculating the cost per ton of pollutant reduced is particularly useful for comparing the cost effectiveness of proposed new standards or programs against existing programs or alternative new programs achieving reductions in the same pollutant or combination of pollutants. The cost-effectiveness analysis presented earlier in this preamble provides such calculations on

a per-vehicle basis. Considering the absolute numbers of avoided adverse health and environmental effects can also provide valuable insights into the nature of the health and environmental problem being addressed by the rule as well as the magnitude of the total public health and environmental gains potentially achieved by the proposed rule. Finally, when considered along with other important economic dimensions—including environmental justice, small business financial effects, and other outcomes related to the distribution of benefits and costs among particular groups—the direct comparison of quantified economic benefits and economic costs can provide useful insights into the overall estimated net economic effect of the proposed standards.

Table IV.D.–6 presents our range of estimates of both the estimated reductions in adverse effect incidences and the estimated economic value of those incidence reductions. Specifically, the table lists the avoided incidences of individual health and environmental effects, the pollutant associated with each of these endpoints, and the range of estimated economic value of those avoided incidences. For several effects, particularly environmental effects, direct calculation of economic value in response to air quality conditions is performed, eliminating the intermediate step of calculating incidences. Table IV.D.–7 supplements Table IV.D.–6 by listing those additional health and environmental benefits that could not be expressed in quantitative incidence and/or economic value terms. A full appreciation of the overall economic consequences of today's proposed standards requires consideration of all benefits and costs expected to result from the new standards, not just those benefits and costs that could be expressed here in dollar terms.

TABLE IV.D.–6.—AVOIDED INCIDENCE AND MONETIZED BENEFITS ASSOCIATED WITH THE TIER 2 RULE FOR A RANGE OF ASSUMPTION SETS

Endpoint	Avoided incidence (cases/year)		Monetary benefits (millions 1997\$)	
	Low ^a	High ^b	Low	High
PM:				
Mortality (long-term exp.—ages 30+)	832	2,416	2,275	14,256
Mortality (long-term exp.—infants) .....	.....	10	.....	56
Chronic bronchitis	3,885	3,914	281	1,354
Hosp. Admissions—all respiratory (all ages)	504	836	4.6	7.6
Hosp. Admissions—congestive heart failure	127	138	1.5	1.7
Hosp. Admissions—ischemic heart disease	146	159	2.2	2.4
Acute bronchitis	984	4,072	0.1	0.2
Lower respiratory symptoms (LRS)	19,782	37,437	0.3	0.5
Upper respiratory symptoms (URS)	3,093	3,387	0.1	0.1
Work loss days (WLD)	233,000	415,000	23.8	42.3
Minor restricted activity days (MRAD)	1,856,000	3,370,000	87.7	159.3

TABLE IV.D.-6.—AVOIDED INCIDENCE AND MONETIZED BENEFITS ASSOCIATED WITH THE TIER 2 RULE FOR A RANGE OF ASSUMPTION SETS—Continued

Endpoint	Avoided incidence (cases/year)		Monetary benefits (millions 1997\$)	
	Low ^a	High ^b	Low	High
Household soiling damage .....	.....	.....	60.1	60.1
Ozone:				
Mortality (short-term; four U.S. studies) .....	.....	388	.....	2,312
Hospital admissions—all respiratory (all ages)	549	736	5.3	7.1
Any of 19 acute symptoms	54,101	71,545	1.3	1.7
Decreased worker productivity .....	.....	.....	43.0	60.4
Agricultural crop damage .....	.....	.....	-1	301
Visibility .....	.....	.....	165	701
Nitrogen Deposition .....	.....	.....	200	200
Total (PM + ozone + visibility + N deposition) .....	.....	.....	3,150	19,525

^a The low assumption set assumes effects from PM do not occur below concentrations of 15 µg/m³, that all mortality and chronic bronchitis effects occur within the same year of the PM reduction (see Section 7.a. of the Draft RIA for a discussion of this uncertainty), utilizes the value of statistical life year lost approach, ozone-related mortality and PM-related infant mortality are not included in the benefits estimate, chronic bronchitis valued with the cost of illness approach, plantings of commodity crop cultivars are assumed to be insensitive to ozone, does not value residential visibility benefits, and uses the lower-bound estimate of "willingness to pay" for recreational visibility to reflect variation.

^b The high assumption set assumes a PM threshold of background, utilizes the value of a statistical life approach, both ozone-related mortality and PM-related mortality are included in the estimation of benefits, chronic bronchitis valued with a willingness-to-pay approach, plantings of commodity crop cultivars are assumed to be sensitive to ozone, and full accounting for recreational and residential visibility benefits.

TABLE IV.D.-7.—ADDITIONAL, NON-MONETIZED BENEFITS OF PROPOSED TIER 2 STANDARDS

Pollutant	Nonmonetized adverse effects
Particulate Matter	Large Changes in Pulmonary Function. Other Chronic Respiratory Diseases. Inflammation of the Lung. Chronic Asthma and Bronchitis.
Ozone	Changes in Pulmonary Function. Increased Airway Responsiveness to Stimuli. Centroacinar Fibrosis. Immunological Changes. Chronic Respiratory Diseases. Extrapulmonary Effects (i.e., other organ systems). Forest and other Ecological Effects.
Carbon Monoxide	Materials Damage. Premature Mortality. Decreased Time to Onset of Angina. Behavioral Effects. Other Cardiovascular Effects. Developmental Effects.
Sulfur Dioxide	Respiratory Symptoms in Non-Asthmatics. Hospital Admissions. Agricultural Effects. Materials Damage.
Nitrogen Oxides	Increased Airway Responsiveness to Stimuli. Decreased Pulmonary Function. Inflammation of the Lung. Immunological Changes. Eye Irritation. Materials Damage.
Hazardous Air Pollutants	Acid Deposition. All Human Health Effects. Ecological Effects.

These results indicate that, based on the particular assumptions, models, and data used in this preliminary BCA, the range of monetary benefits realized after full turnover of the fleet to Tier 2 vehicles would be approximately 3.2 billion to 19.5 billion dollars per year. Comparing this estimate of the economic benefits with the adjusted

cost estimate indicates that the net economic benefit of the proposed standards to society could be from a net cost of 0.4 billion to a net benefit of 16.0 billion dollars per year.

The breadth of the ranges of net economic benefit estimates presented in this preliminary BCA reinforces our conclusion that these BCA results may be indicative of potential overall

economic effects, but they should by no means dictate whether or not the standards proposed today should be promulgated.

f. *What Additional Efforts Will Be Made Following Proposal?* While we believe that the preliminary BCA provides a strong indication that the standards proposed today will yield positive overall economic benefits, we

believe it is important to do additional analysis prior to the final decision regarding these standards. In particular, we plan to develop an updated and extended set of emissions inventories, and to expand the range of pollutant-specific effects to include the benefits of reductions in carbon monoxide (CO), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), and perhaps hazardous air pollutants. We will also carefully review the public comments submitted on the preliminary BCA and review each of the assumptions and methods used in light of these public comments and the advice of the Science Advisory Board charged with reviewing these and other methods being used in the pending section 812 Prospective Study Report to Congress.

E. Other Program Design Options We Have Considered

In addition to the proposed program combining Tier 2 vehicle standards and gasoline sulfur controls, we have considered two other major alternatives to a comprehensive vehicle/fuel program. This section identifies these two alternatives and seeks comment on specific aspects of each.

1. Corporate Average Standards Based on NMOG or NMOG+NO_x

We have described in great detail in previous sections of this preamble why NO_x is our main pollutant of concern for this rulemaking. Based on this conclusion, we are proposing a Tier 2 program that is centered around a full useful life corporate average NO_x standard (0.07 g/mi). Our proposed interim program for non-Tier 2 vehicles is also centered around a corporate average NO_x standard (0.30 or 0.20 g/mi, depending on vehicle type).

California's program, by contrast, is centered on corporate average NMOG standards. We recognize that for Tier 2 vehicles we could also set up the bins of emission standards and impose an average NMOG standard in a similar fashion. A program centered on corporate average NMOG standards could even be defined in such a way that NO_x emissions would be indirectly driven down to the levels we have defined with our proposed Tier 2 standards. Such an approach would provide more consistency with California's program, and would be consistent with our own NLEV program. However, we believe it is best, for the federal program, to use a NO_x average standard.

With a NO_x average standard we can better tailor the various aspects of the program to reduce the pollutant with which we are most concerned. Thus, our averaging, banking and trading

program has been set up to provide NO_x credits for early compliance with the Tier 2 NO_x average standard and to provide additional NO_x credits for manufacturers certifying to extended useful lives. Also, the NO_x average standard allows us to set up bins in such a way as to provide manufacturers with incentives to strive for additional NO_x reductions.

Although the use of an average NO_x requirement conflicts with California's requirements, we do not believe any additional burden is imposed on manufacturers. Under an NMOG averaging requirement, manufacturers would still have to compute separate NMOG averages for their California and Federal vehicles. This would be no smaller burden than computing an NMOG average for California vehicles and a NO_x average for Federal vehicles. We request comment on the appropriateness and burden of our NO_x averaging standards and on what benefits, if any, might be afforded by an NMOG standard for the federal program in lieu of the proposed NO_x average.

2. More Stringent Tier 2 NO_x and Gasoline Sulfur Standards

We considered whether average NO_x levels even lower than 0.07 g/mi (which would likely result in lower NO_x standards for all of the Tier 2 certification bins and substantially limit the number of vehicles certified at NO_x emissions levels significantly higher than 0.07 g/mi) might be possible and cost effective in a scenario where sulfur levels in gasoline would be reduced to an average level on the order of 10 ppm (with perhaps a 20 ppm cap). Manufacturers have requested that California consider such a "near zero" sulfur limit to help them to meet the mandatory bins in the CAL LEV II program, which are more stringent than what would be required in the proposed Tier 2 program. We believe our proposed Tier 2 standards can be met with the proposed gasoline sulfur standards. However, tighter Tier 2 standards could require even lower gasoline sulfur limits.

We selected our proposed Tier 2 standards and gasoline sulfur levels based on air quality need, technical feasibility, and cost effectiveness. Hence, we believe the proposed requirements are reasonable and are as stringent as is warranted. However, in consideration of the alternative discussed here, we request comment on the ability of manufacturers to produce vehicles meeting a corporate average NO_x emission level substantially lower than 0.07 g/mi. How would the cost of producing such a vehicle differ from the

costs estimated for the proposed Tier 2 vehicles? How sensitive would such a vehicle be to the sulfur level of gasoline, and what sulfur level would be required? How soon could manufacturers be expected to be able to comply with a lower NO_x standard, given that they will be producing LEVII vehicles for California beginning in 2004?

We also request comment on the magnitude of additional sulfur reduction that would be necessary to reduce average full useful life NO_x to levels significantly below 0.07 g/mi, and whether such low levels of sulfur can be met with the technology EPA expects refiners to use to meet the requirements we are proposing today. We request comment on the costs of such sulfur reductions and the timing needed to acquire and implement any additional refinery controls. If refiners invest today to achieve 30 ppm average sulfur levels, will those investments be rendered obsolete by a future sulfur requirement of a near-zero average, or would the technologies complement one another? How much time would refiners need to comply with a near-zero sulfur standard following compliance with a 30 ppm standard?

V. Additional Elements of the Proposed Vehicle Program and Areas for Comment

The section describes several additional provisions of the vehicle proposal and issues on which we are requesting comment that were not previously discussed in this preamble.

A. Other Vehicle-Related Elements of the Proposal

1. Proposed Tier 2 CO, HCHO and PM Standards

Table IV.B.-1 in Section IV.B.4.a. above presented the proposed Tier 2 standards for carbon monoxide (CO), formaldehyde (HCHO), and particulate matter (PM). The following paragraphs discuss our selection of these specific standards for proposal.

a. Carbon Monoxide (CO) Standards. Beyond aligning carbon monoxide (CO) standards for all LDVs and LDTs, and allowing harmonizing with California vehicle technology, reduction in CO emissions is not a primary goal of the Tier 2 program. Thus the CO standards we are proposing for all Tier 2 LDVs and LDTs are essentially the same as those from the NLEV program for LDVs and LDT1s. These standards would harmonize with CalLEV II CO standards except at California's SULEV level (EPA Bin 2). This lone divergence would not pose additional burden to

manufacturers because the proposed federal Tier 2 CO standards for these vehicles would be less stringent than California's. Our proposed interim standards during the phase-in of Tier 2 standards would apply these same CO standards.

As we indicated in the Tier 2 Report to Congress, the number and severity of CO NAAQS violations have decreased greatly in recent years. Presently, CO exceedances occur primarily during cold weather. The need for more stringent cold CO standards is a subject of a separate EPA study that is now underway. Consequently, in this rulemaking we propose to simply align CO standards for all categories with those applicable to LDVs and LDT1s under NLEV. This alignment is consistent with our goal of bringing all LDVs and all categories of LDTs under common standards that allow for technology to be harmonized to the extent possible with California.

We believe that technological changes to bring LDT2s and HLDTs⁷⁴ under tighter NMOG standards should easily ensure compliance with the CO standards at no additional cost. In fact, certification data on current model year LDTs indicate that there are LDTs in all categories that can already meet the LDV/LDT1 NLEV CO standard.

We recognize that the vast majority of CO emissions are from motor vehicles and that increases in population in some areas combined with increases in vehicle miles traveled could lead to additional incidences of CO nonattainment. Consequently, we request comment on the need for and implications of tighter CO standards for any category of vehicles affected by today's document.

b. Formaldehyde (HCHO) Standards. Similar to our approach to the proposed CO standards, we are proposing to align all Tier 2 LDVs and LDTs under the formaldehyde standards for LDVs and LDT1s from the NLEV program. For new bins below Bin No. 4, we propose to adopt the CalLEV II standards for formaldehyde. HLDTs, which are not subject to the NLEV program, would become subject to HCHO standards for the first time under the provisions of this rulemaking. The Tier 2 formaldehyde standards would be essentially replicated in the interim standards we are proposing for LDVs and LDTs.

Formaldehyde is a component of NMOG but is primarily of concern for

methanol-fueled vehicles, because it is chemically similar to methanol and is likely to occur when methanol is not completely burned in the engine. HLDTs are not included under the NLEV program and will therefore not face formaldehyde standards as LDVs and LLDTs will in 2001 (1999 in the northeast states). We believe it is appropriate to bring HLDTs under HCHO standards in this rulemaking. Applying formaldehyde standards to HLDTs would be consistent with our goals of aligning standards for all LDVs and LDTs regardless of fuel type and harmonizing technologically with California standards wherever possible and reasonable and the burden would be minimal.

Consequently, we are proposing to include formaldehyde standards for HLDTs under the Tier 2 program as well as under the interim programs. We note that HCHO is actually a component of NMOG, and as with CO, we expect that all vehicles able to meet the Tier 2 or interim NMOG standards (including methanol-fueled vehicles) would readily comply with the HCHO standards.

c. Particulate Matter (PM) Standards. We are proposing to adopt tighter PM standards, although in this case only full useful-life standards. For Tier 2 vehicles, we are proposing a 0.01 g/mi standard for all categories at the Tier 2 (Bin 5) level or below (except ZEV which, of course, is 0.0). To provide manufacturers with additional flexibility, we are proposing a 0.02 g/mi PM standard for vehicles that certify to Bins 6 or 7 standards.

For non-Tier 2 LDV/LLDTs during the phase-in period, we are proposing a PM standard of 0.06 g/mi for Bins 4 and 5. The other standards would be 0.04 for Bin 3 and 0.01 for Bin 2. For non-Tier 2 HLDTs, similar standards would apply except that the highest bin would have a PM standard of 0.06 g/mi, gradually decreasing in the other bins to 0.01 g/mi (Bin 2).

PM standards are primarily a concern for diesel-cycle vehicles, but they also apply to gasoline and other otto-cycle vehicles. We propose to continue to permit otto-cycle vehicles to certify to PM standards based on representative test data from similar technology vehicles. We request comment on the degree to which these standards would affect the certification of diesel-fueled vehicles.

2. Useful Life

The "useful life" of a vehicle is the period of time, in terms of years and miles, during which a manufacturer is formally responsible for the vehicle's emissions performance. For LDVs and

LDTs, there have historically been both "full useful life" values, approximating the average life of the vehicle on the road, and "intermediate useful life" values, representing about half of the vehicle's life. We are proposing several changes to the current useful life provisions for LDVs and LDTs.

a. Mandatory 120,000 Mile Useful Life. We are today proposing to equalize full useful life values for all 2004 and later model year LDVs and LDTs at 120,000 miles. This value would apply to Tier 2 and interim non-Tier 2 vehicles. California, in its LEV II program, has adopted full useful life standards for all LDVs and LDTs of 10 years or 120,000 miles, whichever occurs first. We are proposing that the time period for federal LDV/LLDTs would be 10 years, but it would remain at 11 years for HLDTs consistent with the Clean Air Act.⁷⁵ Intermediate useful life values, where applicable, would remain at 5 years or 50,000 miles, whichever occurs first. Where manufacturers elect to certify Tier 2 vehicles for 150,000 miles to gain additional NO_x credits, as discussed below, the useful life of those vehicles would be 15 years and 150,000 miles. We are not proposing to harmonize with California on the mandatory useful life for evaporative emissions of 15 years and 150,000 miles, but rather we are proposing that this useful life be mandatory for evaporative emissions only when a manufacturer elects optional 150,000 mile exhaust emission certification.

b. 150,000 Mile Useful Life Certification Option. We are proposing to adopt a provision to provide additional NO_x credit in the fleet average calculation for vehicles certified to a useful life of 150,000 miles. In our proposal, a manufacturer certifying an engine family to a 150,000 mile useful life would incorporate those vehicles into its corporate NO_x average as if they were certified to a full useful life standard 0.85 times the applicable 120,000 mile NO_x standard. To use this option, the manufacturer would have to agree to (1) certify the engine family to the applicable 120,000 mile exhaust and evaporative standards at 150,000 miles for all pollutants; and (2) increase the mileage on the single extra-high mileage in-use test vehicle from a minimum of

⁷⁴ As defined earlier, the category called HLDT, or heavy light-duty truck, includes all LDTs greater than 6000 pounds GVWR. This term includes the categories LDT3 and LDT4.

⁷⁵ Section 202(h) of the Clean Air Act specifies a useful life of 11 years/120,000 miles for HLDTs. California is able to use a 10 year figure because it has a waiver under section 209 of the Act to implement its own emission control program when such program is found to be at least as protective of public health and welfare "in the aggregate" as the federal program.

90,000 miles to a minimum of 105,000 miles.

Congress, in directing EPA to perform the Tier 2 study, also directed EPA to consider changing the useful lives of LDVs and LDTs. Manufacturers have made numerous advances in quality, materials and engineering that have led to longer actual vehicle lives and data show that each year of a vehicle's life, people are driving more miles. Current data indicate that passenger cars are driven approximately 120,000 miles in their first ten years of life. Trucks are driven approximately 150,000 miles. Current regulatory useful lives are 10 years/100,000 miles for LDV/LLDTs and 11 years/120,000 miles for HLDTs. We project based on our Tier 2 model that approximately 13 percent of light-duty NO_x and 11 percent of light-duty VOCs

is produced between 100,000 and 120,000 miles. Given the trend toward longer actual vehicle lives and increases in annual mileage, we believe that it is reasonable to propose extension to the regulatory useful life requirements.

Additionally, 41 percent of light-duty NO_x and 59 percent of light-duty VOC is produced beyond 120,000 miles. Based on this data, we believe it is also appropriate to propose incentives to manufacturers to certify their vehicles to extended useful lives beyond 120,000 miles. This is why we are proposing, as discussed above, to provide additional NO_x credits for Tier 2 vehicles certified to a useful life of 150,000 miles.

3. Light Duty Supplemental Federal Test Procedure (SFTP) Standards

Supplemental Federal Test Procedure (SFTP) standards require manufacturers to control emissions from vehicles when operated at high rates of speed and acceleration (the US06 test cycle) and when operated under high ambient temperatures with air conditioning loads (the SC03 test cycle). The existing light duty SFTP requirements begin a three year phase-in in model year 2000 for Tier 1 LDV/LLDTs. For HLDTs, SFTP requirements begin a similar phase-in in 2002. Intermediate and full useful life standards exist for all categories. SFTP standards do not apply to diesel fueled Tier 1 LDT2s and HLDTs. Table V.A.-1 shows the full useful life federal SFTP requirements applicable to Tier 1 vehicles.

TABLE V.A.-1.—FULL USEFUL LIFE FEDERAL SFTP STANDARDS APPLICABLE TO TIER 1 VEHICLES

Vehicle category	NMHC + NO _x (weighted g/mi) ^a	CO (g/mi) ^b		
		US06	SC03	Weighted
LDV/LDT1 (gasoline)	0.91	11.1	3.7	4.2
LDV/LDT1 (diesel)	2.07	11.1	.....	4.2
LDT2	1.37	14.6	5.6	5.5
LDT3	1.44	16.9	6.4	6.4
LDT4	2.09	19.3	7.3	7.3

^a Weighting for NMHC+NO_x and optional weighting for CO is 0.35×(FTP)+0.28×(US06)+0.37×(SC03).

^b CO standards are stand alone for US06 and SC03 with option for a weighted standard.

The NLEV program includes SFTP requirements for LDVs, LDT1s and LDT2s. These requirements impose the Tier 1 intermediate and full useful life SFTP standards on Tier 1 and TLEV vehicles, but impose only 4000 mile standards on LEVs and ULEVs.⁷⁶ NLEV SFTP standards for LEVs and ULEVs are shown in Table V.A.-2. These standards do not provide for a weighted standard for NMHC+NO_x or for CO, but rather employ separate sets of standards for the US06 and SC03 tests. Also, while the NLEV SFTP standards apply to gasoline and diesel vehicles, they do not include a standard for diesel particulates (PM).

TABLE V.A.-2.—SFTP STANDARDS FOR LEVs AND ULEVs IN THE NLEV PROGRAM

	US06		SC03	
	NMHC+NO _x (g/mi)	CO (g/mi)	NMHC+NO _x (g/mi)	CO (g/mi)
LDV/LDT1	0.14	8.0	0.20	2.7
LDT2	0.25	10.5	0.27	3.5

Since no significant numbers of vehicles certified to SFTP standards below TLEV levels will enter the fleet until 2001, manufacturers have raised concerns regarding significant changes to the SFTP program before its implementation. At this point, it seems reasonable not to increase SFTP stringency for the Tier 2 program, but we are proposing to substitute SFTP standards adjusted for intermediate and

full useful life deterioration where there are currently only 4000 mile standards.

Full useful life standards for Tier 2 vehicles are consistent with our mandate under the Clean Air Act. The 4000 mile standards exist in the federal program only because they were adopted in the NLEV program—a voluntary program under which California requirements were adopted nationwide. We derived the full and intermediate useful life standards by

applying deterioration allowances proposed for our MOBILE 6 model to the existing 4000 mile standards for LDVs and LLDTs. For HLDTs we applied similarly derived deterioration allowances to California's LEV I SFTP standards for MDV2s and MDV3s, which are the corresponding categories to LDT3s and LDT4s in the California program. The full and intermediate useful life SFTP standards we are proposing are shown in Tables V.A.-3

⁷⁶ This disparity in useful lives arose because neither EPA nor CARB had full useful life SFTP standards for LEVs or ULEVs when the NLEV program was adopted. Since a major requirement of the NLEV program was harmony with California standards, EPA adopted the California SFTP standards in place for the NLEV time frame (2001 and later).

and V.A.-4. These standards would apply to all Tier 2 vehicles including Tier 2 LDT3s and LDT4s.

TABLE V.A.-3.—PROPOSED FULL USEFUL LIFE SUPPLEMENTAL EMISSION STANDARDS
[(SFTP Standards (grams/mile))]

	USO6 NMHC+NO _x	USO6 CO	SCO3 NMHC+NO _x	SCO3 CO
LDV/LDT1	0.2	11.1	0.26	4.2
LDT2	0.37	14.6	0.39	5.5
LDT3	0.53	16.9	0.44	6.4
LDT4	0.78	19.3	0.62	7.3

TABLE V.A.-4.—PROPOSED INTERMEDIATE USEFUL LIFE SUPPLEMENTAL EMISSION STANDARDS
[(SFTP Standards)(grams/mile)]

	USO6 NMHC+NO _x	USO6 CO	SCO3 NMHC+NO _x	SCO3 CO
LDV/LDT1	0.16	9.0	0.22	3.0
LDT2	0.30	11.6	0.32	3.9
LDT3	0.45	11.6	0.36	3.9
LDT4	0.67	13.2	0.51	4.4

Because our proposed interim standards for LDV/LLDTs (see section VI.A.3.d. above) are derived from NLEV standards, we believe that the SFTP standards we are proposing for Tier 2 vehicles should also apply to the interim non-Tier 2 LDV/LLDTs. However, we propose that TLEV vehicles (EPA interim Bin 5 in Table IV.B.-6), which are not subject to new SFTP standards under NLEV, could continue to meet Tier 1 SFTP standards, and HLDTs under the interim programs could continue to meet Tier 1 SFTP standards that do not fully phase in until the 2004 model year.

LDT3 and LDT4 SFTP standards do not currently apply to diesels. Further, the standards applicable to Tier 1 diesel LDVs and LDT1s are less stringent than gasoline standards and do not apply to the SCO3 cycle. We are proposing to apply the approach we are using with other standards in this document to the Tier 2 and interim SFTP standards. Consequently, we are proposing that Tier 2 and interim LDVs and LDTs with diesel or gasoline engines comply with the same NMHC+NO_x and CO SFTP limits. We are also requesting comment on the appropriate SFTP PM standards for diesel vehicles. We believe it would be appropriate to establish a margin between 10% and 50% above the applicable FTP PM standard to serve as the SFTP standard. As an example of how EPA has recently used such a margin, in recent consent decrees, heavy-duty engine manufacturers have agreed not to exceed emission levels 1.25 times the applicable exhaust standards (including PM standards) when engines are operated over a wide

range of operating conditions. We request comment on the appropriate standard for PM in the SFTP.

4. LDT Test Weight

Historically, HLDTs (LDT3s and LDT4s) have been emission tested at their adjusted loaded vehicle weight (ALVW), while LDVs, LDT1s, and LDT2s have been tested at their loaded vehicle weight (LVW). ALVW is equivalent to the curb weight of the truck plus half its maximum payload, while LVW is equivalent to the curb weight of the truck plus a driver and one adult passenger (300 pounds). As we are proposing in this document to equalize standards and useful lives across LDVs and all categories of LDTs, we believe it is appropriate to test all the vehicles under the same conditions. Therefore, consistent with the CalLEV II program, we are proposing to test HLDTs at their loaded vehicle weight. We recognize that removing all but 300 pounds of load from these trucks during the test provides them with a somewhat "easier" test cycle than they currently have. However, the standards we are proposing for HLDTs under Tier 2, are considerably more stringent than the Tier 1 standards. Further, one of our reasons for bringing HLDTs under the same standards as passenger cars is that these trucks include many vans and sport utility vehicles that are often used as passenger cars with just one or two passengers. Consequently, we believe it is appropriate to test them at LVW.

5. Test Fuels

As discussed elsewhere in this preamble, the NLEV program was

adopted virtually in its entirety from California's program. Because California's standards were developed around the use of California Phase II reformulated gasoline (RFG) as the exhaust emission test fuel, we adopted California Phase II test fuel as the exhaust emission test fuel for gasoline-fueled vehicles in the federal NLEV program, although we recognized at the time that vehicles outside of California would be unlikely to operate on that fuel in use.

We believe that it is best to establish compliance with standards based on the fuel that the vehicles will operate upon. However, we also believe that the major exhaust emission related issues between California Phase II fuel and federal test fuel are related to sulfur and we do not believe the other differences between the two fuels will significantly impact NMOG, CO or NO_x exhaust emissions in Tier 2 (or interim) gasoline fueled vehicles.

In this document, we are proposing to reduce the sulfur in federal test fuel to reflect the reductions in sulfur we are proposing for commercial gasoline. Currently, federal test gasoline is subject to a limit of 0.10 percent by weight. We are proposing to amend that to an allowable range of 30 to 80 ppm (0.003 to 0.008 percent by weight). We also propose that vehicles be certified and in-use tested using federal test fuel. However, where vehicles are certified for 50 state sale, and where other testing issues do not arise, we are proposing to accept the results of testing done for California certification on California Phase II fuel. We would reserve the right to perform or require in-use testing on

federal fuel. Where vehicles are only certified for non-California sale, we propose to require certification and in-use testing on federal fuel. We request comments with supporting emission data on all aspects of these two possible test fuels.

Because differences exist between the California and federal evaporative emission testing procedures, we propose to continue to require the use of federal certification fuel as the test fuel in evaporative emission testing. Under current programs, where California and federal evaporative emission standards are nearly identical, California accepts evaporative results generated on the federal procedure (using federal test fuel), because available data indicates the federal procedure to be a "worst case" procedure. The evaporative standards California has adopted for their LEV II program are more stringent than those we are proposing in this document. We request comment and supporting emission test data on whether vehicles certified to CalLEV II evaporative standards using California fuels will necessarily comply with the federal Tier 2 evaporative standards, including ORVR standards, when tested with federal test fuel.

6. Changes to Evaporative Certification Procedures to Address Impacts of Alcohol Fuels

Current certification procedures, including regulations under the CAP2000 program,⁷⁷ allow manufacturers to develop their own durability process for calculating deterioration factors for evaporative emissions. The regulations (§ 86.1824-01) permit manufacturers to develop service accumulation (aging) methods based on "good engineering judgement", subject to review and approval by EPA. The manufacturer's durability process must be designed to predict the expected evaporative emission deterioration of in-use vehicles over their full useful lives. We are proposing to require that these aging methods include the use of alcohol fuels to address concerns that alcohol fuels increase the permeability and thus the evaporative losses from hoses and other evaporative components.

We have reviewed data indicating that the permeability, and therefore the

evaporative losses, of hoses and other evaporative components can be greatly increased by exposure to fuels containing alcohols.⁷⁸ Alcohols have been shown to promote the passage of hydrocarbons through a variety of different materials commonly used in evaporative emission systems. Data from component and fuel line suppliers indicate that alcohols cause many elastomeric materials to swell, which opens up pathways for hydrocarbon permeation and also can lead to distortion and tearing of components like "O" ring seals. Ethers such as MTBE and ETBE have a much smaller effect. Alcohol-resistant materials such as fluoroelastomers are available and are currently used by manufacturers to varying extents.

Alcohols do not impact evaporative components and hoses immediately, but rather it may take as long as one year of exposure to alcohol fuels for permeation rates to stabilize. The end result in higher permeation and increased in-use evaporative emissions.⁷⁹

Today, roughly 10% of fuel sold in the U.S. contains alcohol, mainly in the form of ethanol, and such fuels are often offered in ozone nonattainment areas. We believe it is appropriate to ensure that evaporative certification processes expose evaporative components to alcohols and do so long enough to stabilize their permeability. Therefore, we are proposing to amend evaporative certification requirements to require manufacturers to develop their deterioration factors using a fuel that contains the highest legal quantity of ethanol available in the U.S.

To implement this change, we are proposing to modify the Durability Demonstration Procedures for Evaporative Emissions found at § 86.1824-01. Our proposal would require manufacturers to age their systems using a fuel containing the maximum concentration of alcohols allowed by EPA in the fuel on which the vehicle is intended to operate, i.e., a "worst case" test fuel. (Under current requirements, this fuel would be about 10% ethanol, by volume.) We are also proposing to modify the Durability Demonstration Procedures to require manufacturers to ensure that their aging procedures are of sufficient duration to stabilize the permeability of the fuel and evaporative system materials.

It is our desire to find an alternative way by which a manufacturer could document or demonstrate that its tanks, hoses, connectors and other evaporative components are made of materials whose permeability is not significantly affected by alcohols. Successful manufacturers would not have to use alcohol fuel in certification. There are a variety of test methods to evaluate permeation losses from materials, components or subassemblies described in the literature.⁸⁰ However, from our discussions with component and materials suppliers, we conclude that there is currently no consensus test procedure or standard available that we could rely on to establish whether a fuel/evaporative system is likely to be sufficiently impermeable to alcohol fuels. We request comment on the availability and appropriateness of such procedures and standards and we request comment on the need for and benefits of certification enhancements to account for the effects of alcohols in fuels. We also seek comment on whether certification test fuel for evaporative emissions should include 10% ethanol.

7. Other Test Procedure Issues

California's LEV II program implements a number of minor changes to exhaust emissions test procedures. We have evaluated these changes and found that, for tailpipe emissions, the California test procedures fall within ranges and specifications permitted under the Federal Test Procedure.

With regard to HEVs and ZEVs, we believe that these vehicles will be predominantly available in California, or that they will typically be first offered for sale in California, because of California's ZEV requirement, which promotes the sale of HEVs and ZEVs. Where manufacturers market HEVs or ZEVs outside of California, it is likely that they will market the same vehicles in California. Consequently, we intend to incorporate by reference California's exhaust emission test procedures for HEVs and ZEVs.⁸¹ We request comment on the appropriateness of this proposed incorporation and an emission allowance for HEVs.

In the NLEV program, we provided a specific formula used by California that could be used to compute an HEV contribution factor to NMOG emissions. This formula took into consideration the

⁷⁷ The Compliance Assurance Program, CAP2000, was proposed in an NPRM (63 FR 39654, July 23, 1998). The final rule was signed on March 15, 1998. As today's NPRM went forward for signature, the CAP2000 final rule had not been published, so no citation for the final rule is available. You should check our web site (<http://www.epa.gov/omswww/>) for the most current information on publication of the CAP2000 rule takes effect in the 2000 model year.

⁷⁸ Numerous SAE papers examine the permeability of fuel and evaporative system materials as well as the influence of alcohols on permeability. See, for example SAE Paper #s 910104, 920163, 930992, 970307, 970309, 930992, and 981360, copies of which are in the docket for this rulemaking.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ California Zero-Emission and Hybrid Electric Vehicle Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. September 18, 1998 for the Board Hearing of November 5, 1998.

range without engine operation of various types of HEVs and had the effect of reducing the NMOG emission standard for a given emission bin (for HEV vehicles only). This would have obvious beneficial effects on a manufacturer's calculation of its corporate NMOG average.

The technology of HEVs is under rapid change and we do not believe that we can design a formula now that will accurately predict the impact of HEVs on corporate average NO_x emissions in the Tier 2 time frame. Consequently, we are including a provision by which manufacturers could propose HEV contribution factors for NO_x to EPA. If approved, these factors could be used in the calculation of a manufacturer's fleet average NO_x emissions and would provide a mechanism to credit an HEV for operating with no emissions over some portion of its life.

These factors would be based on good engineering judgement and would consider such vehicle parameters as vehicle weight, the portion of the time during the test procedure that the vehicle operates with zero emissions, the zero emission range of the vehicle, NO_x emissions from fuel-fired heaters and any measurable NO_x emissions from on-board electricity production and storage.

The final NLEV rule (See 62 FR pg 31219, June 6, 1997) incorporates by reference California's NMOG measurement procedure and adopts California's approach of using Reactivity Adjustment Factors (RAFs) to adjust vehicle emission test results to reflect differences in the impact on ozone formation between an alternative-fueled vehicle and a vehicle fueled with conventional gasoline. While we intend to bring all LDVs and LDTs under NMOG standards beginning in 2004 and while we desire to harmonize with California when practical and reasonable, we are not proposing to allow the use of RAFs for Tier 2 vehicles and interim non-Tier 2 vehicles. As has been discussed elsewhere in this preamble, the NLEV program is a special case in which California standards and provisions were adopted virtually in their entirety. In the preamble to the final NLEV rule (See 62 FR 31203), we expressed our reservations about the use of RAFs. We also addressed our reservations about the use of reactivity factors developed in California in a program that spans a range of climate and geographic locations across the United States in the final rule on reformulated gasoline (RFG) (see 59 FR 7220). We are concerned about the validity of RAFs to predict ozone formation nationwide and

have asked the National Academy of Sciences to look at the scientific evidence in support of the use of these factors nationwide. We expect to receive their report prior to making our final decisions about the Tier 2 standards.

Recognizing that we are not proposing a corporate average NMOG standard, and that RAFs impact only the calculation of NMOG emissions, we request comment on all aspects of RAFs including the impact of not using them on the severity of our proposed standards, their validity to predict ozone formation nationwide, and any impact the lack of RAFs may have on alternative fueled vehicles.

In its LEV II program, California is also implementing a number of changes to evaporative emission test procedures.⁸² Many of these changes address the evaporative emission testing of hybrid electric vehicles. We are generally not proposing to adopt California's changes, because California uses different test temperatures and different test fuel in its evaporative emission testing of gasoline vehicles than we use in the federal program. The preamble to the final NLEV rule (See 62 FR 31227) explains that California and EPA are reviewing an industry proposal to streamline and reconcile the California and federal procedures. That work has not been completed. However, where California proposes procedures specific to HEVs and ZEVs, we do intend to adopt those procedures, except that our testing would occur at lower temperatures, and use a fuel determined by EPA to be representative of federal usage (for HEVs only). Given the small number of HEVs and ZEVs likely to be sold in states other than California early in the Tier 2 program, and given the small quantities of fuel likely to be used by HEVs in any event, we request comment on the appropriateness of simply accepting California evaporative results for HEVs and ZEVs to show compliance with the less stringent federal evaporative standards. We also request comment on whether any or all of the changes California has adopted for evaporative emission testing should be adopted into federal testing requirements.

8. Small Volume Manufacturers

Our proposal includes the following flexibilities intended to assist all manufacturers in complying with the stringent proposed standards without harm to the program's environmental

goals: (1) A four year phase-in of the standards for LDV/LLDTs; (2) a delayed phase-in for HLDTs; (3) the freedom to select from specific bins of standards; (4) a standard that can be met through averaging, banking and trading of NO_x credits; (5) provisions for NO_x credit deficit carryover; and (6) provisions by which a manufacturer may generate additional NO_x credits.

These flexibilities would apply to all manufacturers, regardless of size, and in general we believe they eliminate the need for more specific provisions for small volume manufacturers. However, we are proposing one additional flexibility for small volume manufacturers.⁸³ Our proposal would exempt small volume manufacturers from the 25%, 50% and 75% Tier 2 phase-in requirements applicable to the 2004, 2005 and 2006 LDV/LLDTs and the 50% phase-in requirement applicable to 2008 HLDTs. Instead, small volume manufacturers would simply comply with the appropriate 100% requirement in the 2007 or 2009 model year. Our proposal would also exempt small volume manufacturers from the 25%, 50% and 75% phase-in requirements applicable to interim HLDTs in 2004–2006. Instead, small volume HLDT manufacturers would simply comply with the interim standards, including the corporate average NO_x standard, in 2007 for 100% of their vehicles. During model years 2004–2006, these same small volume manufacturers would comply with any of the interim bins of HLDT standards for 100% of their HLDTs.⁸⁴

Also, we will continue to apply the federal small volume manufacturer provisions, which provide relief from emission data and durability showing and reduce the amount of information required to be submitted to obtain a certificate of conformity. In addition, the CAP2000 program contains reduced in-use testing requirements for small volume manufacturers. Under section V.B.1. below, we describe and request comment on possible additional special provisions for certifiers that qualify as small businesses.

Our proposal to exempt small volume manufacturers from the Tier 2 phase-in requirements eliminates a dilemma that the phase-in percentages might pose to a manufacturer that has a limited product line, i.e., how to address percentage phase-in requirements if the

⁸² California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles; September 18, 1998. Prepared for the November 5, 1998 Hearing of the California Air Resources Board.

⁸³ We define small volume manufacturers to be those with total U.S. sales of less than 15,000 highway units per year. Independent commercial importers (ICIs) with sales under 15,000 per year would be included under this term.

⁸⁴ For a graphical illustration of the phase-ins through time, see Figure IV.B.–1.

manufacturer makes vehicles in only one or two test groups. We have proposed similar provisions for small entities in other rulemakings. Approximately 15–20 manufacturers that currently certify vehicles, many of which are independent commercial importers (ICIs), would qualify. These manufacturers represent just a fraction of one percent of LDVs and LDTs produced. We do not believe that this provision would have any measurable impact on air quality.

9. Compliance Monitoring and Enforcement

a. *Application of EPA's Compliance Assurance Program, CAP2000.* The CAP2000 program (final rule signed March 15, 1998; **Federal Register** cite not yet available) streamlines and simplifies the procedures for certification of new vehicles and would also require manufacturers to test in-use vehicles to monitor compliance with emission standards. The CAP2000 program was developed jointly with the State of California and involved considerable input and support from manufacturers. As the name implies, it can be implemented as early as the 2000 model year.

In today's document, we are proposing that the Tier 2 and the interim requirements would be implemented subject to the requirements of the CAP2000 program. Certain CAP2000 requirements would be slightly modified to reflect changes to useful lives, standard structure and other aspects of the Tier 2 program, but we are proposing no major changes to fundamental principles of the CAP2000 program.

Although we are proposing changes to useful lives in this document, we are not proposing to amend the 50,000 mile minimum mileage used in manufacturer in-use verification testing or in-use confirmatory testing under the CAP2000 program at this time. The CAP2000 in-use program is not yet implemented and we believe it is appropriate to allow

manufacturers to gain experience with procuring and testing vehicles at the 50,000 mile level before making significant changes. However, where one vehicle from each in-use test group would have a minimum mileage of 75,000 miles under the CAP2000 program, we are proposing, consistent with California, to change that figure to 90,000 miles for Tier 2 vehicles.

We may, in our own in-use program, procure and test vehicles at mileages higher than 50,000 and pursue remedial actions (e.g. recalls) based on that data. We may also use that data as the basis to initiate a rulemaking to make changes in the CAP2000 in-use requirements, if the data indicate significant non-conformity at higher mileages.

b. *Compliance Monitoring.* We plan no new compliance monitoring activities or programs for Tier 2 vehicles. These vehicles would be subject to the certification and manufacturer in-use testing provisions of the CAP2000 rule. Also, we expect to continue our own in-use testing program for exhaust and evaporative emissions. We will pursue remedial actions when substantial numbers of properly maintained and used vehicles fail any standard in either in-use testing program.

We retain the right to conduct Selective Enforcement Auditing of new vehicles at manufacturer's facilities. In recent years, we have discontinued SEA testing of new light-duty vehicles and trucks, because compliance rates were routinely at 100%. We recognize that the need for SEA testing may be reduced by the low mileage in-use testing requirements of the CAP2000 program. However, we expect to re-examine the need for SEA testing as standards tighten under the NLEV and Tier 2 programs.

We have established a data base to record and track manufacturers' compliance with NLEV requirements including the corporate average NMOG standards. We expect to monitor manufacturers' compliance with the

Tier 2 and interim corporate average NO_x standards in a similar fashion and also to monitor manufacturers' phase-in percentages for Tier 2 vehicles.

c. *Relaxed In-Use Standards for Tier 2 Vehicles Produced During the Phase-in Period.* As we have indicated numerous times in this preamble, the Tier 2 standards we are proposing would be challenging for manufacturers to achieve, and some vehicles would pose more of a challenge than others. Not only would manufacturers be responsible for assuring that vehicles can meet the standards at the time of certification, they would also have to ensure that the vehicles could comply when tested in-use by themselves under the provisions of the CAP2000 program, and by EPA under its in-use ("Recall") test program.

With any new technology, or even with new calibrations of existing technology, there are risks of in-use compliance problems that may not appear in the certification process. In-use compliance concerns may discourage manufacturers from applying new technologies or new calibrations. Thus, it may be appropriate for the first few years, for those bins most likely to require the greatest applications of effort, to provide assurance to the manufacturers that they will not face recall if they exceed standards by a specified amount.

We are proposing, for Tier 2 vehicles only, that for the first two years after a test group meeting a new standard is introduced, that test group be subject to more lenient in-use standards. These "in-use standards" would apply only to Tier 2 Bins 5 and below, only for the pollutants indicated, and only for the first two model years that a test group was certified under that bin. The in-use standards would not be applicable to any test group first certified to a new standard after 2007 for LDV/LLDTs or after 2009 for HLDTs.

The in-use standards we are proposing are shown in Table V.A.–5 below.

TABLE V.A.–5.—IN-USE COMPLIANCE STANDARDS FOR TIER 2 VEHICLES (G/MI)

[Certification standards shown for reference purposes]

Bin No.	Durability period (miles)	NO _x In-use	NO _x certification	NMOG in-use	NMOG certification
5, 4	50,000	0.07	0.05	N/a	0.075, 0.04.
5, 4	120,000	0.10	0.07	N/a	0.090, 0.055.
3	120,000	0.06	0.04	N/a	0.070.
2	120,000	0.03	0.02	0.02	0.010.

We believe manufacturers should and will strive to meet the Tier 2

certification standards for the full useful lives of the vehicles, but we recognize

that the existence of such in-use standards poses some risk that a

manufacturer might aim for the in-use standard in its design efforts rather than the certification standard, and thus market less durable designs. We do not believe that risk to be significant. We believe that such risks are more than balanced by the gains that could result from earlier application of new technology or new calibration techniques that might occur in a scenario where in-use liability is slightly reduced. Further, we believe that the in-use standards will be of short enough duration that any risks are minimal.

We note that the in-use provisions proposed above are similar to those included in California's LEV II program. We request comment on all aspects of the proposed in-use standards including the appropriateness of and need for separate in-use compliance standards for the early years of the Tier 2 program.

d. Enforcement of the Tier 2 and Interim Corporate Average NO_x Standards. Under the proposed programs, manufacturers could either report that they met the relevant corporate average NO_x standard in their annual reports to the Agency or they could show via the use of NO_x credits that they have offset any exceedence of the corporate average NO_x standard. Manufacturers would also report their NO_x credit balances or deficits.

The averaging, banking and trading program would be enforced through the certificate of conformity that the manufacturer would need to obtain in order to introduce any regulated vehicles into commerce. The certificate for each test group would require all vehicles to meet the applicable Tier 2 emission standards from the applicable bin of the Tier 2 program, and would be conditioned upon the manufacturer meeting the corporate average NO_x standard within the required time frame. If a manufacturer failed to meet this condition, the vehicles causing the corporate average NO_x exceedence will be considered to be not covered by the certificate of conformity for that engine family. A manufacturer would be subject to penalties on an individual vehicle basis for sale of vehicles not covered by a certificate. These provisions would also apply to the interim corporate average standards.

As outlined in detail in the preamble to the final NLEV rule, EPA would review the manufacturer's sales to designate the vehicles that caused the exceedence of the corporate average NO_x standard. We would designate as nonconforming those vehicles in those test groups with the highest certification emission values first, continuing until a number of vehicles equal to the

calculated number of noncomplying vehicles as determined above is reached. In a test group where only a portion of vehicles would be deemed nonconforming, we would determine the actual nonconforming vehicles by counting backwards from the last vehicle produced in that test group. Manufacturers would be liable for penalties for each vehicle sold that is not covered by a certificate.

We are proposing in today's action to condition certificates to enforce the requirements that manufacturers not sell NO_x credits that they have not generated. A manufacturer that transferred NO_x credits it did not have would create an equivalent number of debits that it would be required to offset by the reporting deadline for the same model year. Failure to cover these debits with NO_x credits by the reporting deadline would be a violation of the conditions under which EPA issued the certificate of conformity, and nonconforming vehicles would not be covered by the certificate. EPA would identify the nonconforming vehicles in the same manner described above.

In the case of a trade that resulted in a negative credit balance that a manufacturer could not cover by the reporting deadline for the model year in which the trade occurred, we propose to hold both the buyer and the seller liable. This is consistent with other mobile source rules, except for the NLEV rule as discussed below. We believe that holding both parties liable will induce the buyer to exercise diligence in assuring that the seller has or will be able to generate appropriate credits and will help to ensure that inappropriate trades do not occur.

In the NLEV program we implemented a system in which only the seller of credits would be liable. In the preamble to the final NLEV rule (See 62 FR 31216), we explained that a multiple liability approach would be unnecessary in the context of the NLEV program given that the main benefit to a multi-party liability approach would be to "protect against a situation where one party sells invalid credits and then goes bankrupt, leaving no one liable for either penalties or compensation for the environmental harm." Our preamble stated further that EPA would not necessarily take the same approach for "other differently situated trading programs."

The NLEV program was implemented to be a relatively short duration program, during which time we could expect relative stability in the industry. Also, given that NLEV is a voluntary program of lower than mandated standards, we did not expect that the

smallest manufacturers would opt in. These are the companies whose stability is most in jeopardy in a dynamic and very competitive worldwide business.

We currently believe that the Tier 2 program and its framework will remain for many years. We note that the program is not scheduled for complete phase-in for almost nine years after the publication of this proposal. All manufacturers, large and small, will ultimately have to meet the Tier 2 standards. We cannot predict that in the Tier 2 time frame there will not be companies that leave the market or are divided between other companies in mergers and acquisitions. Thus we believe it is prudent to implement a program to provide inducements to the seller to assure the validity of any credits that it purchases or contracts for. However, we request comment on whether we should implement a program that would only deem the seller to be in violation if it sold credits it could not supply.

10. Miscellaneous Provisions

We are proposing to continue existing emission standards from Tier 1 and NLEV that apply to cold CO, certification short testing, refueling, running loss, idle CO for LDTs, and highway NO_x. We are not proposing to continue the 50 degree (F) standards and testing included in the NLEV program. The 50 degree standards are a part of the NLEV program because that national program adopted California requirements virtually in their entirety. These standards had not previously been part of any federal program. We request comment on the need and the associated burden for any of the standards mentioned in this paragraph.

B. Other Areas on Which We are Seeking Comment

1. LDV/LDT Program Options

The alternatives for which we seek comment would have impacts on the level of emission reductions achieved by the program as well as on the cost and technological impacts of the program. Any decision to adopt an alternative would have to consider those factors. We welcome comments on all of the options described below. Commenters should address cost, technological feasibility and emission impact whenever possible.

a. Alternatives to Address Stringency of the Standards.

i. Alternative Standards and Implementation Schedules.

We believe that the Tier 2 standards and phase-in schedule contained in this proposal provide appropriate lead time and flexibility for manufacturers to

achieve cost-effective emission reductions in a reasonable time period. Further, our standards and phase-in schedules are reasonably harmonized with California's LEV II program to facilitate the sale of 50-state vehicles and to minimize the administrative burdens involved with having to meet the requirements of both California and EPA simultaneously. We believe our proposed fuels provisions will ensure that appropriate fuels are available to enable Tier 2 vehicles to provide substantive in-use emission reductions. Some have suggested delays in the program to 2007 and later. However, many states need reductions as soon as possible for 2007 NAAQS compliance, so there is a need for an aggressive but achievable implementation schedule.

Nevertheless, we are interested in reviewing alternative standards, implementation schedules and averaging schemes. Therefore we request comment on all aspects of the standards and schedules we are proposing today, including the interim standards and schedules, and we request comment on what alternative standards and implementation approaches might provide comparable emission reductions that are cost-effective in the same time frame as our proposal.

We recognize that the Tier 2 program as proposed today does not provide for further reductions in average certification levels after 2008 as California's LEV II program does. We request comment on the technological feasibility, necessity, cost and likely benefits of further reductions in corporate average standards after 2009, including comments on the reduction of the corporate average NO_x standard to a level of approximately 0.05 g/mi in the 2011–2012 time frame. We also request comment on a traditional, non-averaging standard of 0.07 g/mi NO_x with related standards for NMOG, CO, HCHO, and PM in the 2011–2012 time frame, applicable to all LDVs and LDTs.

ii. Use of Family Emission Limits (FELs) Rather than Bins.

A bins-based program with an overarching corporate average standard has worked well in California for many years and is being implemented nationwide beginning in 1999 under the NLEV program. We believe that a phased in, bins-based program is the best way to implement the Tier 2 exhaust emission standards and, at the same time, encourage the development of advanced emission control technology. We believe that manufacturers of light duty vehicles and trucks are accustomed to such programs and will appreciate the flexibility and

opportunities for 50-state certification that a bins-based program affords.

We are aware, of course, that in other EPA mobile source emission programs, we have implemented averaging standards that were not based upon bins. In these programs, manufacturers declare a family emission limit (FEL) either above or below the averaging standard set by EPA. The FEL becomes the standard for that family. Similar to the bins approach, manufacturers compute a sales weighted average for the subject pollutant at the end of the model year and then determine credits generated or needed based on the distance of that average above or below the standard.

In an FEL based program, every test group can have a different FEL—essentially there is an unlimited continuum of bins to choose from (although there is usually an upper limit or cap on the FELs). The FEL approach adds flexibility and could increase the incentive for cost-effective improvements in vehicle emissions performance. Under a bins approach, a manufacturer is limited to step-wise improvements. An FEL approach could provide incentive for manufacturers to realize smaller, low cost emissions improvements that could be achieved, for example, through engine re-calibration.

However, FEL-based programs create other concerns. One concern with an FEL approach is that it may be viewed as providing too much flexibility since a manufacturer could request a change in an FEL based on a change in desired compliance margin above the certification level or based on concern about its credit balance rather than a change in technology. In EPA's FEL-based programs, it is not uncommon for a manufacturer to declare an FEL that is identical to its certification level. It is also not uncommon for a manufacturer to change its FEL several times during a model year, based, among other reasons, on the availability of or need for credits. In a bins approach, such changes are unlikely, since a change in bins involves more of an increment in emissions and involves compliance with all pollutants in that bin. Consequently, a bins approach eases EPA's compliance monitoring burden. It provides additional assurance that expected emission reductions will occur in use because some vehicles may "over-qualify" for their bin resulting in greater than expected reductions than if they exactly met the standard for that bin. Of course, an FEL approach could be modified to restrict or prohibit changes in certification levels during a model year.

Also, in an FEL-based program, it may be necessary to establish corporate average standards for other pollutants besides NO_x. These standards would then require manufacturers to establish FELs for additional pollutants. In a bins-based program, the standards for the other pollutants are simply set by the different bins.

An FEL approach could also lead to additional complexity in manufacturer in-use testing under the CAP2000 program and in EPA in-use testing because if FEL changes are made, the issue of which standard to measure compliance against arises as does the issue of how many vehicles to test for each different FEL. If we were to adopt an FEL approach, we would have to consider significant changes to the in-use provisions of the CAP2000 program to assure that all variations of a test group were adequately covered by manufacturer in-use testing.

We request comment on the appropriateness and need for an FEL-based program for the Tier 2 and/or interim standards. Commenters supporting the use of an FEL-based program should also provide comment as to how EPA can best manage the issues related to in-use testing and how EPA can best assure that FEL changes are closely linked to real changes in vehicle emissions.

iii. Use of Different Averaging Sets.

We chose for our proposal the broadest possible—and therefore most flexible—averaging set for the Tier 2 vehicles. We are proposing that, beginning in 2009 when phase-in of all vehicles is complete, all LDVs and LDTs could be averaged together to meet the corporate average NO_x standard. We believe this approach is appropriate because it treats LDTs like LDVs, considering that LDTs are used as passenger cars much of the time. Also, by permitting this broad averaging, a manufacturer of larger LDTs that might have difficulty meeting a 0.07 g/mi NO_x level can certify the LDTs to Bin 6 or 7 and offset the emissions of these trucks with cars or smaller trucks that it certifies to levels below 0.07 g/mi.

While we believe our proposed averaging program is appropriate, we recognize that most manufacturers do not produce larger LDTs and may be able to meet the corporate average NO_x standard of 0.07 g/mi with less overall effort. Therefore, we request comment as to whether another approach to averaging might be more appropriate such as a segregated approach where LDTs are averaged separately from LDVs or where HLDTs (LDT3s and 4s) are averaged separately from LDV/LLDTs.

iv. *Different Standards for Different Categories of Vehicles.*

We have explained several times in this preamble that we believe the same standards should apply to all LDVs and LDTs because LDTs are so often used as passenger vehicles, and because the standards are feasible for all LDVs and LDTs. The technological challenge may be greater for larger trucks, so our proposal provides additional leadtime and a later start date for HLDTs to provide more opportunity to resolve potential problems. However, we recognize that other approaches exist that could yield comparable environmental benefit. Therefore, we request comment on other approaches such as one that would employ a lower corporate average NO_x standard for LDV/LLDTs, with a higher corporate average standard for HLDTs.

v. *Consideration of Special Provisions for the Largest LDTs and Advanced Technology.*

California has adopted a provision in its LEV II program, under which a manufacturer could certify up to 4 percent of its larger LDTs to a higher NO_x standard. These trucks could meet a 0.10 g/mi NO_x standard rather than a 0.07 g/mi NO_x standard, provided they have a payload of at least 2500 pounds. California chose the figure of 4% because it approximates the fraction of such trucks in the largest volume manufacturer's fleet.

We have not proposed such an option in the federal program because we are providing additional lead time and compliance on average for all cars and trucks beginning in 2009. Nevertheless, we do recognize that the largest trucks will likely require the greatest application of emission control technology to comply with Tier 2 standards and we expect that larger trucks will likely be the last, and the most difficult, vehicles to phase into the Tier 2 program.

In the context of the flexibilities already proposed for the federal program, we request comment on the need for and environmental impact of additional program flexibility for the largest trucks. One option we have considered would allow manufacturers to exclude a small fraction (perhaps 4 percent) of their largest Tier 2 trucks (HLDTs) from the corporate average NO_x calculation beginning in 2009 and lasting through approximately model year 2011. These trucks would still be subject to a NO_x standard of 0.20 g/mi and all other standards and provisions of the Tier 2 program, including the requirement to fit within a Tier 2 bin for other emission standards.

This provision would provide a less stringent standard for the heaviest LDTs. We believe these LDTs are the most likely to be used primarily for work and commercial purposes, while at the same time having the most difficulty complying with Tier 2 requirements. We request comment on all aspects of this provision, including whether the allowable sales fraction (4%) and payload minimum (2500 pounds) set by California would be appropriate for the federal provision, and whether such a concept should also be applied to only LDT4s or both LDT3s and 4s. Supporters of such an approach should comment on the appropriate allowable sales fraction for the interim vehicles.

Some have suggested that a potential way of providing flexibility for advanced technology vehicles would be to provide bins with less stringent standards while retaining the stringency of the 0.07 NO_x average. These additional bins would augment the current flexibilities offered to manufacturers. We request comment on this idea, specifically on including additional bins with NO_x standards up to 0.60 g/mi, with any other modifications that are appropriate. We also ask comment on whether such bins should be a temporary part of the Tier 2 program.

vi. *Measures to Prevent LDT Migration to Heavy-Duty Vehicle Category.*

Existing regulations define a light-duty truck to be any motor vehicle rated at 8500 pounds gross vehicle weight rating (GVWR) or less that has a curb weight of 6000 pounds or less and that has a basic frontal area of 45 square feet or less, which is:

- Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- Designed primarily for transportation of persons and has a capacity of more than 12 persons, or
- Available with special features enabling off-street or off-highway operation and use.

For the heaviest LDTs, we are concerned that manufacturers may, in some cases, find it attractive to add GVWR capacity, curb weight or frontal area to their vehicles such that they would no longer meet one or more of the criteria to be considered an LDT. The vehicles would then fall into the heavy-duty category and would be subject to less technologically challenging standards.

We would like to develop reasonable restrictions to prevent this "gaming" of the LDT definition. The ideal restrictions would prevent migration of LDTs above the limiting criteria, but would not impact vehicles with

legitimate needs to be outside, but close to, the LDT definition. Our objective is complicated by the fact that many LDTs currently have derivatives or corresponding models that are over 8500 pounds GVWR.

We have considered various approaches to restrictions on LDTs. Some of the ideas we have considered are as follows:

- Require all complete trucks in the 8500–10,000 pound GVWR range to meet light-duty standards.
- Raise the GVWR cutoff from 8500 pounds to some other number such as 8750, 9000 or 9500 pounds.
- Require manufacturers of vehicles that are above but close to any of the three size criteria to provide justification that they cannot accomplish their intended function if built to a lower size criterion.
- Require manufacturers to provide supporting data, surveys, etc., that vehicles above, but close to, any of the LDT cutoffs are primarily used for commercial purposes.

We request comment on all aspects of this vehicle migration issue, including specific comment on the ideas presented above and on other approaches that might be appropriate. This discussion serves as notice that we are very likely to finalize a provision to address this vehicle migration issue. You are encouraged to consider the approaches we have outlined above and provide specific suggestions on other approaches as well as comments as to the need for such controls, their feasibility and their cost.

In the longer term, the best way to address the vehicle migration issue is to implement standards for complete heavy-duty vehicles that have a stringency comparable to their HLDT counterparts. In the near future, we expect to publish an NPRM addressing emissions from gasoline-fueled heavy-duty engines and vehicles for 2004 and later model years. As part of that effort we are considering chassis-based standards for gasoline-fueled complete vehicles between 8,500 and 14,000 lbs GVWR. The degree to which such standards discourage migration depends upon the relative stringency of the standards. EPA requests comment on the potential effectiveness of such a strategy in addressing migration concerns and the timing and level of emission standards necessary to do so.

vii. *Use of Non-conformance Penalties (NCPs).*

NCPs are monetary payments that manufacturers can pay to meet an adjusted standard in lieu of complying with a prescribed emission standard or set of emission standards. See CAA

section 206(g). Current regulations at 40 CFR part 86 Subpart L provide for NCPs for HLDTs, and for heavy-duty engines. However, in order to establish NCPs for a specific standard or set of standards for these vehicles and engines, EPA must first determine that (1) substantial work will be required to meet the standard for which the NCP is offered; and (2) that there will be a manufacturer that is a technological laggard in complying with that standard. EPA must also, through rulemaking, determine compliance costs so that the penalty rates can be established appropriately.

NCPs were used extensively by manufacturers of on-highway heavy-duty engines in the late 1980s, prior to the implementation of our heavy-duty averaging, banking and trading program. Since that time, their use has been rare. We believe manufacturers have used the flexibility of an averaging, banking and trading scheme as a preferred alternative to incurring the monetary losses associated with NCPs.

We are not proposing NCPs for HLDTs in the primary Tier 2 program or in the interim programs. This is because we believe that the NO_x averaging program we are proposing makes it unlikely that the criteria for NCPs mentioned above will be met, as NO_x credits from other vehicles may be used to enable HLDTs to meet the 0.07 g/mi average NO_x standard.

We have considered whether NCPs might be appropriate for the Tier 2 diesel particulate standards, for which our proposal contains no averaging provisions. We are not proposing PM NCPs for those diesel powered trucks, but we request comment on whether such NCPs would be appropriate. We believe that appropriate technologies will be available from component vendors and diesel engine suppliers. We request comment on the need for and appropriateness of NCPs for any Tier 2 standard for HLDTs.

viii. *Additional NO_x Credits for Vehicles Certifying to Low NO_x Levels.*

There is currently substantial work underway to develop vehicles with extremely low emissions. We believe that it is appropriate to encourage such technology by providing incentives for its use. Consequently, we are requesting comment as to whether we should implement a provision by which manufacturers can earn additional NO_x credits for certifying to levels below 0.07 g/mi. As we envision such a provision, manufacturers would be allowed, in the calculation of their year end corporate average NO_x level, to multiply the number of vehicles sold which are certified to bins below 0.07 g/

mi NO_x by some preset multiplier, or set of multipliers. For example, the number of vehicles certified to the 0.04 bin might be multiplied by 1.5, those in the 0.02 bin might be multiplied by 2.0 and those in the 0.0 bin (ZEVs) might be multiplied by 3.0.

We recognize that such a program would enable manufacturers to use more credits than actually generated in use, and that the use of these credits would likely result in some additional NO_x emissions. However, we believe that it may be appropriate to provide inducements to manufacturers to strive for ever lower NO_x emissions and that these inducements may help pave the way for greater and/or more cost effective emission reductions from future vehicles. We request comment on all aspects of such incentive credits. Issues related to these credits include the value of a multiplier or multipliers, whether early credits should be subject to the multipliers, and whether there should be a "sunset" provision to limit the time period in which manufacturers could obtain and/or use these extra credits. We request comment on a sunset year of 2009, since it is the end of the proposed Tier 2 program phase-in.

ix. *Incentives for Manufacturers to Bank Additional Early NO_x credits.*

We are interested in exploring any reasonable approaches that would provide incentives to manufacturers to produce vehicles meeting the 0.07 g/mi NO_x standard earlier than required. We believe that early certification to this level will help manufacturers gain experience with new or enhanced technologies on a limited scale before they must be applied to the entire fleet, and that such experience would have a positive, although hard to quantify, environmental benefit.

We have proposed an approach elsewhere in this preamble that permits manufacturers to utilize alternative phase-in schedules. Manufacturers that introduce Tier 2 vehicles before the first required year in the primary phase-in schedule could follow a more flexible phase-in path to 100% compliance than required under the primary option. Manufacturers would also be able to generate NO_x credits if these "early" vehicles met a corporate average NO_x level of less than 0.07 g/mi.

We have considered whether a mechanism that provided additional NO_x credits could induce manufacturers to introduce more Tier 2 vehicles sooner than required. Such a mechanism might substitute a number higher than the 0.07 g/mi NO_x standard in the credit calculation so that the manufacturer would subtract its

corporate average NO_x level from, say, 0.10 and then multiply the difference by the number of Tier 2 vehicles to determine credits earned. While we believe such a scheme might induce manufacturers to accelerate the introduction of Tier 2 vehicles, we have concerns about whether this approach would lead to windfall credits and whether we would need to employ a discount to compensate for them. Should the resulting credits have finite or infinite life? Should we apply such a scheme to LDV/LLDTs only; or should we also apply it to HLDTs; and should we apply such a scheme to the interim standards for HLDTs? We request comment on these and all other aspects of permitting additional NO_x credits for Tier 2 and interim vehicles.

x. *Flexibilities for Small Volume Manufacturers and Small Businesses.*

In section V.A.8. above, we propose to waive the Tier 2 phase-in requirements for small volume manufacturers.⁸⁵ These manufacturers, which each produce 15,000 or fewer vehicles per year, would simply comply with the 100 % requirement in 2007 (2009 for HLDTs).

Some very small volume manufacturers of LDVs and LDT1s and LDT2s elected not to opt into NLEV and thus will produce Tier 1 vehicles during the NLEV program. We are seeking comment about the burden that our interim standards might impose on very small manufacturers in 2004 given that they will have to meet the Tier 2 standards no later than 2007 under today's proposal. Similarly we are concerned about the burden that the interim standards might impose on any small volume HLDT manufacturers. We request comment on the need for and appropriateness of a provision that would waive the interim standards for very small volume manufacturers who produce, say, less than 1,000 vehicles per year, or who qualify as small businesses (see below).

The panel convened under the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁸⁶ recommended that we seek comment on five provisions outlined below to ease our

⁸⁵ A "small volume manufacturer" is not necessarily a "small business". Rather, "small volume manufacturer" is an EPA term that refers to entities whose annual on-highway sales are 15,000 or fewer vehicles per year. However, most if not all small businesses covered under this discussion are also "small volume manufacturers," though most small volume manufacturers are not small businesses.

⁸⁶ This panel was convened, consistent with SBREFA, by EPA, the Small Business Administration, and the Office of Management and Budget to review of the likely impact of Tier 2 requirements on small businesses.

proposal's impact on small businesses. These provisions, if adopted, would apply to "small businesses" as defined by Small Business Administration. The

size of a "small business" varies by industry type as represented by SIC codes. Tables V.B.-2 and V.B.-3 contain the SIC codes that could potentially be

impacted by the Tier 2 rule and the maximum number of employees or maximum revenue a business can have to be considered a small business.

TABLE V.B.-2.—SBA SMALL BUSINESS CATEGORIES FOR SMALL INDEPENDENT COMMERCIAL IMPORTERS

SIC code	Description	Size standard (annual revenues in millions)
7533	Auto Exhaust System Repair Shops	\$5
7549	Automotive Services	5
8742	Management Consulting Services	5

TABLE V.B.-3.—SBA SMALL BUSINESS CATEGORIES FOR ALTERNATIVE FUEL VEHICLE CONVERTERS

SIC code	Description	Size standard (\$ =annual revenues)
3592	Carburetors, Pistons, Rings and Valves	500 employees.
3714	Motor Vehicle Parts and Accessories	750 employees.
5172	Petroleum Products	100 employees.
5984	Liquefied Petroleum Gas Dealers	\$5 million.
7549	Automotive Services	\$5 million.
8742	Management Consulting Services	\$5 million.
8931	Commercial Physical Research	500 employees.

The vast majority of businesses in these categories are not subject to these EPA requirements. However, some businesses in these categories may in fact manufacture LDVs and LDTs or may modify vehicles produced by others in a manner that will subject them to the requirements applicable to manufacturers under EPA regulations. For example, Independent Commercial Importers (ICIs) modify imported motor vehicles into configurations that they certify to meet federal emission requirements. Approximately 15–20 small businesses qualified as manufacturers and received certificates of conformity each year over the last five years.

For simplicity, and consistency with the report of the SBREFA panel, we refer to these small businesses as small certifiers in the following discussion. The requirements to certify continue to apply only to parties that meet the definition of "manufacturer."

Consistent with the recommendations of the SBREFA panel, we request comment on the following ideas:

For small certifiers that convert imported vehicles to U.S. standards (independent commercial importers or ICIs) and for small certifiers that convert vehicles to operate on alternative fuels, provide a delay in required compliance of two years after the particular model vehicle is certified to Tier 2 standards by the original equipment manufacturer.

This provision would provide time for development of appropriate emission control systems and test data for small

businesses who may need to first obtain a regular production vehicle certified by the OEM before they can begin work.

Although it was not a specific recommendation of the SBREFA panel, we are also requesting comment on whether ICIs should be exempted from the Tier 2 and interim fleet average NO_x standards. ICIs may not be able to predict their sales of vehicles and control their fleet average emissions because they may be dependant upon vehicles brought to them by individuals attempting to import uncertified vehicles. Presently, the NLEV requirements are optional for ICIs and ICIs are specifically exempted from complying with the fleet average NMOG standard under the NLEV program. (See 40 CFR 85.1515(c)). Further, a prohibition in the current ICI regulations specifically bars ICIs from participating in any emission related averaging, banking or trading program. (See 40 CFR 85.1515(d)). If we do not amend this prohibition, the likely outcome would be that ICIs could choose any bin to certify their vehicles and would pick the least stringent standards.

Given the historically very low sales of ICIs and the probable challenges that even the least stringent Tier 2 and interim non-Tier 2 bins will impose upon ICIs, we do not expect ICIs to grow significantly in number or size. Therefore, we do not expect that provisions exempting or prohibiting ICIs from the fleet average NO_x standard

would have any air quality impact. However, we request comment on all aspects of the applicability of the fleet average NO_x standards to ICIs.

Establish a credit program and provide incentives for large manufacturers so that they would make credits available to small certifiers.

This provision would address the problem inherent with any emission credit trading program that manufacturers holding credits don't have to trade them. While the panel proposed this option, it did not provide any thoughts on what type of incentives might be appropriate and necessary to induce larger manufacturers to supply credits at reasonable prices to small businesses.

Develop a program to provide credits to small certifiers for taking older vehicles off of the road (i.e., a scrappage program).

Because older vehicles often have very high emissions, removing one from use could more than offset the emissions of a new vehicle produced by a small certifier that was unable to fully comply with the Tier 2 standards. Scrappage programs must be designed so that they remove vehicles from the fleet that see significant annual mileage. They must be adequately funded and managed. They must have controls and oversight to ensure that they don't remove vehicles that would have been scrapped anyway.

Design a case-by-case hardship relief provision that would delay required

compliance for small certifiers that demonstrate that they would face a severe economic impact from meeting the Tier 2 standards.

We have implemented case-by-case hardship provisions in some rules subject to specific limiting constraints. Typically, these would provide that small businesses that have tried all other regulatory options and apply in writing before they experience nonconformity, could obtain a 1 year delay in the implementation of the standards. The small business would have to show that failure to comply was the fault of external and extenuating circumstances and that inability to sell the subject vehicles would have a major impact on the company's solvency.

If the Tier 2 program involves a phase-in of standards, allow small certifiers to comply at the end of such a phase-in.

As indicated at the beginning of this section, we are proposing this option for all phase-ins associated with the Tier 2 program including the phase-in of the Interim standards for HLDTs (see Section V.A.8. above).

We request comment on the need for, appropriateness and environmental impact of all of the items proposed by the SBREFA panel. Also, we request comment on whether any such provisions would be necessary and appropriate for the interim standards for non-Tier 2 vehicles.

xi. Adverse Effects of System Leaks.

For the emission control system to operate as designed, the air-fuel (A/F) ratio must stay within strictly prescribed limits that vary with vehicle/engine operating conditions and engine controls must respond quickly to the slightest changes in this ratio. Even the smallest air leak in either the exhaust manifold or exhaust pipe or any related connection can provide the oxygen sensor incorrect information on the oxygen content of the exhaust gas it uses to calibrate the engine A/F ratio.

Some manufacturers have taken steps to address this concern as part of their overall design process by incorporating features such as corrosion-free flexible couplings, corrosion-free steel, and improved welding of catalyst assemblies. EPA is concerned that either as a result of manufacturing or installation errors or errors in a repair action, there will be an unintentional and unobserved increase in emissions and perhaps a failure to meet FTP and a SFTP emission standards in-use.

EPA seeks comment on design or onboard monitoring requirements that might be useful to address this concern. EPA would also seek comment on a provision that would require a

manufacturer to demonstrate through engineering analysis or design that such possibilities have been taken into account.

xii. Consideration of Other Corporate Averaging Approaches.

We welcome comments on the pros and cons, including regulatory burden, of establishing a combined NMOG plus NO_x corporate average standard in lieu of either the proposed NO_x average or a California-like NMOG average. We also request comments, if not provided in response to Section IV.B. above, on the concept of requiring a declining corporate average NO_x standard or a declining corporate average NMOG standard at the federal level. For example, we would consider a declining average approach that reduces NMOG/NO_x corporate average emissions by 20–25% over the period 2008–2012, or nominally to 0.07 NMOG/0.05 NO_x. Such a reduction might involve a reduction in gasoline sulfur levels as discussed in Section IV.E.2. above. We also seek comment on the idea of eliminating the averaging concept in 2011 or 2012 and setting the LDV/LDT standards at the levels of Bin No. 5 in Table IV.B.-2 (0.07 g/mi NO_x plus the other standards). Commenters should address the cost and feasibility of these approaches.

2. Tighter Evaporative Emission Standards

We considered proposing tighter evaporative emission standards, including California's LEV II standards for evaporative emissions, shown in Table V.B.-4 below.

TABLE V.B.-4.—CALIFORNIA'S LEV II EVAPORATIVE HYDROCARBON STANDARDS
[Grams per test]

Vehicle class	Three day diurnal + hot soak standard	Supplemental two day diurnal + hot soak standard
LDV	0.50	0.65
LDT1 AND LDT2	0.65	0.85
LDT3 AND LDT4	0.90	1.15

These standards are based on an evaporative emission test procedure that is conducted at different temperatures using fuel with lower vapor pressure than the corresponding federal evaporative test procedure. Under current evaporative standards, California accepts the results of federal evaporative testing, because it represents a worst case test. We do not know whether California's standards are

feasible under the federal test conditions.

We are concerned about evaporative hydrocarbons and we recognize that they constitute a portion of the mobile source VOC inventory that will be similar in size to the light duty exhaust contribution when NLEV exhaust standards are in place. Our proposed standards, which are found in section IV.B.4.a. above, are roughly in line with current average certification levels but will nonetheless yield real in-use evaporative reductions as manufacturers reduce certification levels to gain safety margins under the new standards. These standards will also prevent manufacturers from "backsliding" from their current low certification levels upward toward the existing standards as they seek cost reductions. Our proposed standards will require manufacturers to capture the abilities of available fuel system materials to minimize evaporative emissions. Further, we are proposing certification enhancements to address the impact of alcohol fuels on evaporative emissions, and we expect that these measures will lead to more uniform use of lower permeability materials that will result in in-use reductions in non-attainment areas where alcohol fuels are the most prevalent.

We request comment on the appropriateness and cost effectiveness of applying tighter evaporative standards in the federal program.

3. Credits for Innovative VOC, NO_x and Ozone Reduction Technologies Not Appropriately Credited by EPA's Emission Test Procedures

Compliance with the current and proposed EPA motor vehicle emission standards is based on the emission performance of a vehicle over EPA's prescribed test procedure. While this test procedure addresses many of the aspects of a vehicle's impact on air quality, it does not address all such impacts. Two developing technologies have been brought to EPA's attention that have shown significant potential to improve ozone-related air quality, but that would not do so over the current EPA test procedure.

The first example is a device that removes ozone from the air as the vehicle is driven. A major producer of automotive catalysts, Englehard, has approached both California and EPA with a proposal for a technology (called Premair) in which vehicle radiators would be coated with a catalyst that converts ambient ozone to oxygen. In its CalLEVII program, California has adopted some basic ground rules concerning the types of information that

would have to be submitted in order to certify such ozone reduction technologies and determine the amount of allowable NMOG credits.⁸⁷ This determination would be made on a case-by-case basis. The manufacturer would have to provide an evaluation of the system's performance and durability, as well as a description of the on-board diagnostic strategy to monitor the performance of the device in use. The NMOG credit would be based upon the running of an approved airshed model, which would determine the amount of NMOG emission reductions that would produce the same change in one-hour peak ozone as the use of the ozone reduction device being evaluated.

Englehard has asked EPA to develop a similar procedure to that adopted by ARB and to consider granting their technology a NO_x credit, as well as an NMOG credit. The manufacturer of the vehicle employing Premair would then have the option of which credit to use.

There are a number of issues that would have to be resolved before such credits could be granted, including:

- The methods to be used to certify in-use performance over the useful life of the vehicle,
- The requirement for, and the design and certification of, an onboard diagnostic system to monitor in-use performance, and
- Which airshed model to use, including what cities and episodes to use in modeling the 8-hour peak ozone reduction, and
- The methods for determining either the NMOG or NO_x credit, or both.

EPA has placed information provided to date by Englehard in the docket to this rule, and requests comments on the appropriateness of such credits, and on the procedures that should be used to determine those credits, should we proceed.

The second example is an insulated catalyst. The insulation retains heat for extended periods of time, increasing the catalyst temperature when the engine is started and reducing the time required for the catalyst to reach an operational temperature. This technology can reduce cold start emissions for engine off times (called soaks) of 24 hours or less. The vast majority of engine soaks in-use are less than 24 hours. However,

EPA's test procedure only tests emissions at two fairly extreme soak times: 10 minutes and 12–36 hours. The 10 minute soak is so short that even an uninsulated catalyst is warm enough to quickly begin working upon restart. The 36 hour soak is beyond the practical limit of cost-effective insulating techniques.

In 1994, as part of its proposed SFTP standards, EPA proposed adding an intermediate soak of 1 hour to the test procedure, due both to the large number of in-use soaks falling between the current 10 minute and 12–36 hour soaks and to the desire to encourage catalyst technology that reduced cold start emissions for such intermediate soaks. EPA did not promulgate this aspect of its SFTP standards, due in part to concerns about the cost effectiveness of mandating such controls. However, the efficacy of such technology was not questioned. Thus, there appears to be little reason to prohibit a manufacturer from using such technology to reduce in-use emissions in lieu of other technology needed to meet the proposed Tier 2 standards.

As mentioned above concerning Premair, a methodology would need to be developed to estimate the impact of an insulated catalyst, or other any other similar technology, on in-use emissions so that equivalent NMOG and NO_x emission credits could be determined. Also, procedures for certifying in-use performance and durability and onboard diagnostics would also have to be addressed. EPA requests comments on the appropriateness of allowing emission credits for insulated catalysts and other technologies not appropriately assessed under current test procedures. EPA also requests comments on the procedures to be used to develop such credits.

EPA also requests comments on whether the credits granted for either ozone or emission reduction technologies should be restricted to the proposed Tier 2 standards, or whether they should also be granted under the current NLEV standards and the proposed interim standards for non-Tier 2 vehicles, as well.

4. Need for Intermediate Useful Life Tier 2 Standards

For our Tier 2 and interim standards we have generally proposed both full useful life and intermediate useful life FTP exhaust emission standards. (See Tables IV.B.–2, –3, –6, –7, –10 and –11.) We have also proposed full and intermediate life SFTP standards. (See Tables V.A.–3 and –4.) Intermediate useful life standards are more stringent than full useful life standards and

reflect our experience that better emission performance can be expected at lower mileages.

We are not proposing intermediate useful life standards for the three lowest Tier 2 FTP bins, and we are not proposing intermediate standards for the lowest FTP bin (the Zero Emission Vehicle or ZEV bin) in any case. This is because the full life standards in those bins are already so low as to allow little deterioration between a new vehicle and a vehicle at full useful life.

We request comment on the appropriateness of and need for intermediate useful life and what the environmental consequences might be from deleting intermediate useful life standards for all Tier 2 vehicles and from the interim standards bins that match those of the Tier 2 program.

VI. Additional Proposed Elements and Areas for Comment: Gasoline Program

Section VI.A. presents two additional issues that have some impact on our proposed program: whether states are preempted from requiring gasoline sulfur reductions as a result of today's action, and whether other gasoline properties may also need to be controlled in the future. We encourage your comment on all of these issues. Section VI.B. provides additional detailed information about our proposed requirements for establishing compliance with the gasoline sulfur standards, as well as how we will enforce these standards. The major details of our proposed gasoline sulfur control program were explained in Section IV.C.; the information presented here is supplementary.

A. Other Areas for Comment

The following sections raise additional issues that are relevant to our decisions regarding gasoline sulfur control and the design of our gasoline sulfur program. We encourage you to comment on these issues if they are of interest to you.

1. Would States Be Preempted From Adopting Their Own Sulfur Control Programs?

When we adopt federal fuel standards, states are preempted from adopting similar state-level controls. Section 211(c)(4)(A) of the CAAA prohibits states from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under section 211(c)(1). This preemption applies to all states except California, as explained in section

⁸⁷ See page II–28 of the following California document for a full discussion: Proposed Amendments to California Exhaust and Evaporative Emission Standards and Test Procedures for passenger Cars, Light-Duty Trucks and Medium Duty Vehicles ("LEV II") and Proposed Amendments to California Motor Vehicle Certification, Assembly-Line and In-Use Test Requirements ("CAP2000"). Released September 18, 1998 for the Air Resources Board Hearing of November 5, 1998.

211(c)(4)(B). For these states other than California, the Act provides two mechanisms for avoiding preemption. First, section 211(c)(4)(A)(ii) creates an exception to preemption for state prohibitions or controls that are identical to the prohibition or control adopted by EPA. Second, states may seek EPA approval of SIP revisions containing fuel control measures, as described in section 211(c)(4)(C). EPA may approve such SIP revisions, and thereby "waive" preemption, only if it finds the state control or prohibition "is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements."

We are proposing to adopt the sulfur standards pursuant to our authority under section 211(c)(1). Thus, we believe final promulgation of the sulfur standards would result in the clear preemption of future state actions to adopt fuel sulfur controls.⁸⁸ States would therefore need to obtain a waiver from us under the provisions described in section 211(c)(4)(C) for all state fuel sulfur control measures adopted following promulgation, unless the state standard were identical to our final sulfur standard. We welcome your comments on our interpretation of the source and effect of federal preemption.

Section 211(c)(4)(A) preempts state fuel controls if EPA has "prescribed" federal controls. We read this language to preempt non-identical state standards on the effective date of the standards, as opposed to the date the standards become enforceable. Thus, if the proposed standards are finalized according to our expected schedule, this rulemaking would preempt state actions upon promulgation at the end of 1999, even though the standards would not require sulfur reductions until 2004. This interpretation is consistent with EPA actions applying other federal fuel measures. See 54 FR 19173 (May 4, 1989) (noting preemption of Massachusetts state RVP measure before start of first control period for federal RVP). We also believe this interpretation is consistent with the intent behind section 211(c)(4)(A). Though the standards are not immediately enforceable, they will have an immediate impact on refiners' investment decisions. We believe, by adopting 211(c)(4)(A), Congress

intended to provide security for these investment decisions by preventing unnecessary conflict between state and federal fuel controls.

2. Potential Changes in Gasoline Distillation Properties

During the last several years, representatives of the automotive industry have presented information to us suggesting that control of certain gasoline distillation properties can provide reductions in both exhaust hydrocarbon emissions as well as the frequency of performance problems such as hesitation, cold startability, and impeded acceleration. Automotive industry representatives contend that the source of most performance problems—slower atomization and vaporization due to fuels with higher boiling points—also leads to less efficient combustion, and thus higher levels of hydrocarbons in the exhaust.

With regard to Tier 2 vehicles, some automakers have claimed that in-use fuels with high boiling points would impact their ability to control the mixture of air and fuel entering the engine, and thus could result in in-use emissions that are higher than expected based on certification levels. Thus, automakers argue, controls on the distillation properties of gasoline would not only produce emission benefits for the in-use fleet, but would also ensure the viability and benefits of Tier 2 vehicles.

On January 27, 1999, we received a petition⁸⁹ from a group of automakers in which they provided a more detailed analysis of the costs and benefits of controlling gasoline distillation properties. In this petition, they specifically requested that the Distillation Index (DI) be capped at 1200 for all summer-grade gasolines nationwide. They have defined the distillation index by the equation $1.5 \times T_{10} + 3 \times T_{50} + T_{90} + 20 \times Oxy$, where T_{10} represents the temperature at which 10% of the fuel has evaporated in a standard distillation test, and likewise for T_{50} and T_{90} , and Oxy is the oxygen content contributed by ethanol. This petition includes a study conducted by MathPro Inc.⁹⁰ to estimate the feasibility and cost to the refining industry of capping all summer grade gasoline at a

DI level of 1200. MathPro concluded that the cost of such control would be approximately 0.4 ¢/gal on average for all summer grade gasoline.

We believe that the analyses presented by this petition have merit. However, we do not believe that they are sufficient to justify capping DI at 1200 at this time, since there are a number of issues that it does not address. Before we could formally propose a DI cap, we would need to have a justification for the cap based on air quality need, peer-reviewed estimates of the cost to the refining industry and to consumers, and comparisons of the cost effectiveness of this strategy to that for other potential hydrocarbon control strategies. Therefore, we are not today proposing controls on gasoline distillation properties. However, we request comment on the automakers' DI petition and the included MathPro report in terms of their sufficiency in demonstrating that a DI cap of 1200 is appropriate.

B. Gasoline Sulfur Program Compliance and Enforcement Provisions

1. Overview

We are proposing enforcement mechanisms that track those of the reformulated gasoline/conventional gasoline (RFG/CG) rule, because of significant similarities between the two programs, including refinery average standards, refinery level and downstream level caps, and the generation and use of credits. These features raise similar compliance issues for both programs. Because of the importance of assuring that all gasoline meets the sulfur standards, measures are needed to assure the accuracy of refiner and importer testing, and to assure that the quality of gasoline is not adversely affected downstream of the refinery. Downstream enforcement would be based primarily on EPA sampling and testing, and examination of product transfer documents (PTDs) and other evidence.

More specifically, we are proposing:

- That refiners and importers test each batch of RFG and CG produced or imported for sulfur content and maintain testing records and retain test samples.
- That refiners and importers of gasoline submit reports regarding compliance with averaging and credits provisions.
- That the current attest procedures of the RFG/CG rule⁹¹ be applied to sulfur rule compliance.

⁸⁸ Even in the absence of final promulgation of federal sulfur standards, existing federal fuel controls for RFG and conventional gasoline have raised issues of preemption of state fuel sulfur measures. In any case, it is clear that state sulfur standards would be preempted as of the date of promulgation of the proposed federal sulfur standard.

⁸⁹ "Petition to regulate gasoline distillation properties". Submitted by DaimlerChrysler Corporation, Ford Motor Company, General Motors Corporation, and the Association of International Automobile Manufacturers. Submitted to EPA Administrator Carol Browner on January 27, 1999. EPA Air Docket A-97-10, Document No. II-G-286.

⁹⁰ "Technical and economic implications of controlling the distillation index of gasoline." MathPro Inc., October 21, 1998. EPA docket A-97-10, document II-G-268.

⁹¹ 40 CFR part 80 subpart F.

- Enforcement provisions regarding the credit program, to prevent the use, sale or purchase of invalid credits, and to require adjustments to compliance calculations based on use of invalid credits.

- Requirements to ensure compliance by small foreign refiners subject to individual refinery sulfur standards and to ensure the separation of such foreign gasoline from all other gasoline to the U.S. port of entry.

- Downstream maximum sulfur caps, which would apply to all persons in the chain of distribution of gasoline, including distributors, resellers, carriers, retailers and wholesale purchaser-consumers of gasoline.

- Voluntary downstream quality assurance testing by distributors and refiners to help assure compliance.

The sulfur standards proposed today would apply, as in other fuels programs, to all motor vehicle fuel that meets the definition of gasoline. See 40 CFR 80.2. This definition typically includes all the gasoline that is produced and distributed through the gasoline distribution system, including gasoline, such as marina gas, that is ultimately used in nonroad equipment. Such fuel meets the definition of gasoline and is subject to the standards proposed today. For example, where gasoline makes up only a small portion of what a refinery produces, and is perhaps a byproduct of other processing, the refiner could not avoid the sulfur standard by designating the product as marina gasoline or nonroad gasoline. EPA would apply the sulfur standard to the same broad group of products that meets the definition of gasoline for its other gasoline fuel programs.

We are aware that there are certain fuels, such as aviation fuel and racing fuel, that are generally segregated from gasoline throughout the distribution system. Where such fuels are segregated from motor vehicle gasoline and not made available for use in motor vehicles, the fuel would not be subject to sulfur rule standards.⁹² We propose that such fuel become subject to the sulfur standards and other regulatory requirements and prohibitions if its segregation from gasoline at any point in the distribution system is compromised. Offering such fuel for motor vehicle use or dispensing such fuel for motor vehicle use would be prohibited. We are also proposing specific PTD requirements and labeling requirements to prevent introduction of high sulfur

fuels into motor vehicles. EPA invites comment on whether such fuel should also be subject to refinery level sulfur standards, or whether it should be subject to the standards from the point at which it is made available for use in motor vehicles.

The proposal would clarify the definition of refinery at 40 CFR 80.2(h). Specifically, we are proposing to clarify that "refinery" means any facility, including a plant, tanker truck or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.⁹³

We propose that any oxygenate blender that only adds oxygenate to gasoline or to "reformulated blendstocks for oxygenate blending" (RBOB), be exempt from sulfur standards and would not be required to conduct any new testing, or perform any new recordkeeping or reporting, because we believe the sulfur level of EPA-allowed oxygenates added downstream from the refinery is very low. We believe it is an appropriate assumption, barring special circumstances, that the sulfur content of the gasoline will be diluted in proportion to the addition of the oxygenate.

In the remainder of this section we address enforcement issues regarding today's proposed rule that are not discussed in section IV.C.3., above.

2. What Requirements is EPA Proposing for Foreign Refiners and Importers?

As discussed in section IV.C, under today's proposal, standards for gasoline produced by foreign refineries that are not subject to small refiner individual refinery standards would be met by the importer. Standards for gasoline produced by a foreign refinery subject to an individual sulfur rule standard would be met by the foreign refinery, with certain limited exceptions. The provisions would be very similar to the foreign refinery provisions of the RFG/CG rule, under 40 CFR 80.94.

a. What Are the Proposed Requirements for Small Foreign Refiners with Individual Refinery Sulfur Standards?

Under the RFG/CG rule, EPA has promulgated regulations⁹⁴ addressing establishment and implementation of individual baselines for CG produced by certain foreign refiners. The purpose of these regulations is to assure the

compliance of gasoline supplied from foreign refineries with individual compliance baselines. It includes comprehensive controls, requirements and enforcement mechanisms to monitor the movement of gasoline from the foreign refinery to the U.S., to monitor gasoline quality and to provide for compliance and enforcement as necessary.

Today we are proposing similar requirements that would apply to any foreign refiner that can demonstrate that it meets the small refiner criteria. Foreign refinery baselines would be based on average sulfur levels and the volume of gasoline imported to the U.S. in 1997–98. Any foreign refiners that obtain a foreign refinery sulfur rule baseline would be subject to the same requirements as domestic small refiners with individual refinery sulfur rule standards. Additionally, provisions similar to the provisions at 40 CFR 89.94 would apply, that include:

1. Segregating gasoline produced at the small refinery until it reaches the U.S.;
2. Refinery registration;
3. Controls on product designation;
4. Load port and port of entry testing;
5. Attest requirements; and
6. Requirements regarding bonds and sovereign immunity.

The rationale for these enforcement provisions is discussed more fully in the Agency's August 28, 1997 preamble to the final RFG/CG foreign refineries rule. (See 62 FR 45533 (Aug. 28, 1997)).

By no later than January 1, 2010,⁹⁵ all gasoline would be subject to a single national averaged standard and one national refinery level cap. Thus, EPA is proposing that, beginning on that date, the use of foreign small refinery baselines would sunset and standards for all imported gasoline would be met by U.S. importers. With a single national standard and cap, gasoline sulfur content could most readily be monitored at the U.S. importer level, since there would no longer be a special class of gasoline with different standards that would need to be monitored.

b. *What Are the Proposed Requirements for Truck Importers?* The proposed sampling and testing requirements for importers require sampling and testing of each batch of gasoline. For parties that import gasoline into the U.S. by truck, the every-batch testing requirement would include testing the gasoline in each

⁹² If a fuel is not segregated throughout the gasoline distribution system, but is fungibly mixed with gasoline, then it becomes a gasoline that is subject to the standard.

⁹³ This is consistent with all current EPA fuels rules, interpretations, policies and question and answer documents, and is only a clarification.

⁹⁴ 40 CFR 80.94.

⁹⁵ As stated in section IV.C. of the preamble, small refiner individual refinery standards would sunset January 1, 2008, except for any small refineries that receive a hardship extension not to exceed two years.

truck compartment, or if the gasoline is homogeneous, testing the gasoline in the truck. However, EPA is concerned that this testing requirement may not be feasible for truckers hauling many small loads of gasoline. Since some northern U.S. communities rely, in large part, on gasoline transported into the U.S. by truck from Canadian terminals, these communities could suffer gasoline shortages if this requirement proves too burdensome for truck importers. We therefore propose to allow alternative requirements for truck-imported gasoline only.

i. Truck Transports of Gasoline (Excluding Gasoline Subject to Small Foreign Refiner Individual Refinery Standards).

EPA is proposing a limited alternative approach for truck importers in lieu of every-batch testing. This proposal would be based on the importer meeting the 30 ppm sulfur average standard on a per-gallon basis. Under this proposal, the importer would be allowed to rely on the sulfur results of sampling and testing conducted by the operator of the truck loading terminal in Canada. The environmental consequences of this proposal would be neutral, because by meeting the 30 ppm sulfur standard on an every-gallon basis the standard also is being met on average.

The importer would be required to demonstrate the gasoline meets the 30 ppm sulfur standards on an every-gallon basis. The gasoline in the storage tank from which the importer's trucks are loaded would have to be sampled and tested subsequent to each receipt of gasoline into the terminal tank, and these tests would have to show the gasoline meets the 30 ppm sulfur standard. For each truck load of gasoline, the importer would have to obtain documents that accurately state the sulfur content of the gasoline. The importer then would treat each truck load of imported gasoline as a separate batch for purposes of the recordkeeping and reporting requirements.

The terminal operator in most cases would not be subject to United States laws, so the proposal contains safeguards that are intended to ensure the gasoline in fact meets the applicable standard. First, the importer would be required to conduct an independent program of quality assurance sampling and testing of the gasoline dispensed to the importer. This sampling and testing would have to be at a rate specified in the proposed regulations, and the sampling would have to be unannounced to the terminal operator. In addition, EPA inspectors would have to be given access to conduct inspections at the truck loading terminal

and at any laboratory where samples collected pursuant to this proposed approach are analyzed. These inspections could be unannounced, and would include gasoline sampling and testing, and record reviews.

EPA requests comment on this proposal for parties that import gasoline by truck. Specifically, EPA requests comment on the provisions that apply to persons located outside the United States, and the need for EPA inspectors to conduct inspections at terminals located outside the United States. In addition, EPA recognizes that the proposed per-gallon standard of 30 ppm is more restrictive than an annual average standard with per-gallon caps, although it provides assurance that gasoline imported by truck will meet the requirements of the sulfur control program. However, establishing an averaged standard with per-gallon caps for truck-imported gasoline would require more substantial recordkeeping, reporting and auditing by the importers and more compliance monitoring by the EPA. EPA requests comments on the alternative of allowing an annual average standard with per-gallon caps for truck importers and the appropriate sulfur standards that should apply under such an approach.

ii. Truck-Imported Gasoline Subject to Small Foreign Refiner Individual Refinery Standards

There are additional compliance concerns related to the gasoline produced by small foreign refiners whose gasoline is imported into the U.S. by truck. The proposed requirements for gasoline produced at a small foreign refinery with an individual baseline, and certified as subject to the individual standard (S-FRGAS), include the necessity of segregating the gasoline from all other gasoline, from the refinery gate to the U.S., so that compliance with standards can be tracked. Under our proposed certified S-FRGAS provisions applicable to other importers, each batch of gasoline must be tested at the load port and port of entry. However, in the case of gasoline imported by truck, each truckload of such gasoline would constitute a batch. Given the small batch volumes for truck imports, the testing and other procedures proposed for certified S-FRGAS may not be feasible. The issue is further complicated because the load port, in effect, stretches from the refinery, through a pipeline and to a terminal in Canada. Therefore, EPA is proposing an alternative to the requirement for testing every truckload of imported certified S-FRGAS.

EPA is proposing that small foreign refiners whose gasoline is exported to

the U.S. by truck would, as part of their petition for an individual baseline, submit a plan designed to ensure that certified S-FRGAS remains segregated from all other gasoline from the refinery to the U.S. The proposed plan would be reviewed for approval in conjunction with the baseline petition.

Rather than specifying the precise requirements of such a plan in the regulations, EPA would allow the refiner to develop its own procedures for ensuring that S-FRGAS remains segregated until it reaches the U.S. However, EPA believes that any plan would have to include certain elements. For example, PTDs would have to accompany each transfer of certified S-FRGAS through the distribution system, clearly identifying the origin of the gasoline and prohibiting its commingling with any product other than certified S-FRGAS from that refinery. The refiner may need to enter into contracts with pipelines and terminals, if the gasoline is shipped in this manner, that ensure segregation and prohibit commingling. This certified product could then only be loaded into trucks if they were importing the gasoline into the U.S.

The refiner of such gasoline would have to receive and maintain all such product shipment documents, including U.S. import documents, for five years and review these on an ongoing basis to ensure segregation is maintained until reaching the U.S. To further ensure that this review occurs, EPA is proposing that the refiner's plan would include attest audit procedures to be conducted annually by an independent third party that would review the refiner's procedures and records to ensure that the certified S-FRGAS is segregated at all times. For example, these procedures would likely include volume reconciliation to confirm that product is transferred without commingling. However, additional procedures may be needed to accomplish the goal of ensuring that certified S-FRGAS remains segregated from all other gasoline.

3. What Standards Would Apply Downstream?

EPA is proposing downstream per-gallon cap standards that would apply to all parties in the distribution system downstream of the refinery-level, including pipelines, terminals, distributors, carriers, retailers and wholesale purchaser-consumers. Downstream standards would help ensure the sulfur level of gasoline remains below the cap level when dispensed for use in motor vehicles, thereby avoiding the adverse emissions

consequences of using gasoline with a sulfur content above the cap level.

EPA is proposing that downstream standards would be more lenient than the refinery-level cap standards so that refiners and importers can produce gasoline that equals the refinery-level cap standard. It has been EPA's experience that if a refiner produces gasoline that equals, or almost equals a standard, that gasoline may be shown to violate the standard when subsequently tested at a location downstream of the refinery due to testing variability. As a result, parties downstream of the refinery (primarily pipelines) set commercial specifications for the quality of the gasoline they will accept that are more stringent than the standard that applies to the downstream party. This, in effect, forces refiners to produce gasoline that is "cleaner" than the refinery-level standard.

In other fuels programs (for example, the benzene per-gallon standard for RFG) EPA has resolved this concern by announcing enforcement tolerances for fuels standards that apply downstream of the refinery-level, thereby reducing the need for pipelines to set specifications more stringent than the refinery level standards. EPA believes the approach proposed for the gasoline sulfur cap standards—more lenient downstream standards—would have the same effect as announced enforcement tolerances.

EPA is proposing that the values of the downstream cap standards would reflect the testing variability that could reasonably be expected when different laboratories test gasoline for sulfur content, that is, lab-to-lab variability, or reproducibility. For gasoline subject to the 80 ppm refinery-level sulfur cap the proposed downstream standard would be 95 ppm. This difference reflects the lab-to-lab variability established by the American Society for Testing and Materials (ASTM).⁹⁶ For gasoline subject to refinery-level sulfur caps higher than 80 ppm, which would be the case for gasoline produced before 2006 and by certain small refiners, the proposed downstream cap would be similarly established by using the most recent available ASTM reproducibility data.

As described in section IV.C.3, EPA is proposing that the cap standards that apply to some small refiners would be higher than the cap standards that apply

to refiners generally. The downstream standards that apply to this small refiner gasoline would be correspondingly higher, based on ASTM reproducibility for each refinery's assigned cap. If gasoline produced by a small refiner with a higher cap standard is mixed in the distribution system with other gasoline with a lower cap standard, the entire mixture then would be subject to the higher cap standard. For this reason, EPA is concerned that the small volume of small refinery gasoline could drive up the downstream standard for all gasoline, most of which would have been subject to the much lower national cap standard.

Therefore, EPA is proposing that during the period small refinery individual standards are in effect, PTDs must identify whether gasoline is comprised, in whole or in part, of gasoline produced at a small refinery with a higher sulfur cap standard than the national cap standard, and the level of the downstream cap applicable to the gasoline. A downstream party could rely on the information contained in the PTDs for gasoline received by that party as the basis for whether gasoline contains any small refinery gasoline.

However, as gasoline is mixed, and re-mixed, in downstream pipelines and tanks, the percentage of a particular gasoline that is small refinery gasoline normally will progressively diminish. For this reason EPA also is proposing that a downstream party must classify gasoline as containing no small refinery gasoline if a test result for the gasoline shows a sulfur content below the applicable national downstream cap.

Under these proposed requirements, downstream parties and EPA would know the downstream standard that applies to any particular gasoline. If the gasoline contains no small refiner gasoline, the downstream standard would be based on the national cap. If the gasoline is comprised in whole or in part of small refiner gasoline subject to a higher cap standard, the downstream standard would be based on this higher cap standard. This approach would require regulated parties and EPA to review and rely on the information contained in PTDs.

Following are two examples of how gasoline from small refineries with individual standards (S-RGAS) would be identified downstream of the refinery and how the downstream cap would apply:

(1) In 2005 the national refinery cap standard is 180 ppm. If a small refinery with an individual sulfur cap standard produces a batch of gasoline that contains 175 ppm sulfur, the transfer document that accompanies that batch

of gasoline into a pipeline may not indicate the batch contains S-RGAS.

(2) In 2006, when the national downstream cap is 95 ppm, a terminal receives three shipments of gasoline that are identified in the PTD's as S-RGAS subject to downstream per-gallon cap standards of 205, 325 and 410 ppm. The terminal operator combines these shipments in a storage tank. That gasoline mixture is subject to a downstream cap standard of 410 ppm and any PTD subsequently provided to transferees must identify the gasoline as containing S-RGAS and state the gasoline is subject to a downstream cap standard of 410 ppm.

After several additional receipts of gasoline into the storage tank, the terminal operator obtains a test result indicating the sulfur level of the mixture is 90 ppm. Based on this test result, the gasoline mixture becomes subject to the national cap standard of 95 ppm and any PTD subsequently provided to transferees may not state the gasoline contains S-RGAS.

EPA requests comment on these proposed downstream standards. Specifically, we request comment on an alternative whereby gasoline would be presumed to be subject to the national cap downstream standard, unless the responsible regulated party were able to demonstrate through PTDs the presence of small refinery gasoline. EPA also requests comment on any alternatives that would allow enforcement of the national downstream cap standards during the period small refiner individual refinery standards were in effect.

4. What Are the Proposed Testing and Sampling Methods and Requirements?

a. *What Is the Primary Test Method for Gasoline?* We propose that the ASTM standard method D 2622-98 be the primary test method for testing for sulfur in gasoline by refiners and importers. This is the regulatory method under the RFG/CG rule.⁹⁷ However, we are requesting comment on whether ASTM method D 5453-93, entitled "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence," should be the primary method. We are specifically concerned about the suitability of these test methods for sulfur levels between 0-10 ppm, and invite comment on other appropriate test methods, including ASTM D 4045, which is used under the California fuels program for sulfur levels below 10 ppm. We are also requesting

⁹⁶ ASTM standard method D-2622-98, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry." The California Air Resources Board found nearly identical reproducibility under ASTM D-2622-94, according to a round robin study conducted by ARB and received by EPA Feb. 11, 1999.

⁹⁷ See 40 CFR 80.46(a). The proposed rule would update the current method, ASTM D 2622-94.

comment on relative costs of the methods. We believe that ASTM D 5453 would significantly reduce capital costs for test equipment and that operational costs would be similar to ASTM D 2622. A description of these ASTM test methods, as well as other methods discussed later in this section, can be found in Table VI-1, below.

TABLE VI.-1.—ASTM STANDARD TEST METHODS AND PRACTICES DESCRIBED IN THIS SECTION

ASTM No.	Title
D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.
D 4045	Standard Test Method for Sulfur in Petroleum Products by Hydrogenolysis and Rateometric Colorimetry.
D 4057	Standard Practice for Manual Sampling of Petroleum and Petroleum Products.
D 4177	Standard Practice for Automatic Sampling of Petroleum and Petroleum Products.
D 5453	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence.
D 5842	Standard Practice for Sampling and Handling of Fuels for Volatility Measurement.

b. What Is the Proposed Test Method for Sulfur in Butane? We are proposing that ASTM D 5623 would be the regulatory method for testing the sulfur content of butane. This is the sulfur test method for butane that the Agency proposed under the RFG/CG rule (proposal published at 62 FR 37338 (July 11, 1997)). However, we received several negative comments regarding this test method in response to our proposal. We are requesting comments on other methods and correlation of those methods to ASTM D 5623. We are also requesting comment on appropriate correlation procedures and other issues such as bias, accuracy, and precision.

c. Is EPA Proposing a Requirement To Test Every Batch of Gasoline Produced or Imported? Under today's proposal, all refiners and importers⁹⁸ would be required to sample and test the sulfur content of each batch of gasoline produced or imported. Test results would be used to calculate a refiner's or importer's annual average sulfur level. Any batch of gasoline that exceeded the applicable sulfur cap could not be distributed or sold in the U.S., unless it

was exempted from this rule, as described later in this section. This "every-batch" testing requirement is not a new requirement for RFG refiners and importers. However, it would be a new requirement for refiners and importers of CG.

In the past, CG refiners and importers have been allowed to prepare composite samples of gasoline from multiple gasoline batches and test the composite sample. However, we believe that every-batch sulfur testing by refiners and importers is necessary to ensure compliance with upstream and downstream sulfur caps contained in the proposed rule. We have proposed the use of alternative test methods to reduce the cost of testing. We are requesting comment on this proposed requirement.

i. Butane Blenders' Every-Batch Testing Requirement

Under the RFG rule, refiners that blend butane to previously certified gasoline (PCG) must determine the volume and parameter values of the butane, including sulfur content, by testing the gasoline, before and after blending, and calculating the properties of the butane by subtracting the volume and parameter values of the PCG. For CG only, under certain conditions, we have allowed butane blenders to use the parameter specifications of butane as tested by the butane producer. This includes an assumed sulfur content of 140 ppm. We have allowed this alternative to every-batch testing because of the costs of testing each load of butane.⁹⁹

We are proposing a similar alternative to every-batch testing for butane blenders under today's sulfur program. We propose that butane blenders could use the actual sulfur test result of their suppliers, if the butane contained less than 30 ppm sulfur and if the butane blender undertook a quality assurance program to ensure that the supplier's sampling and testing was accurate. If the butane were tested and found to violate the 30 ppm cap, the butane blender would be in violation for the volume of product that exceeded the 30 ppm cap that was added to gasoline and for any violations of the national downstream cap resulting from the butane sulfur content. We believe this is a fair alternative to every batch testing and the only alternative that gives EPA reasonable ability to monitor

compliance. We request comment on this proposal.

ii. Refiners Blending Other Blendstocks into Previously Certified Gasoline

Refiners that blend blendstock into PCG would be required to sample and test each batch of gasoline produced. This would normally include sampling and testing the PCG to determine its sulfur content and volume; then sampling and testing the combined product subsequent to blending; and calculating the sulfur content and volume of the blendstock (which is the blender's batch for annual average compliance and reporting purposes), by subtracting the volume and sulfur content of the PCG from the volume and sulfur content of the combined product. We are proposing to allow such refiners to meet an alternative testing requirement in lieu of testing every batch of gasoline. Provided that the refiner's test result for the sulfur content of each of the blendstocks is less than the national refinery level per-gallon cap standard, a refiner could sample and test each blendstock when received at the refinery, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average sulfur standard.

d. What Sampling Methods Are Proposed? Sampling methods apply to all parties that conduct sampling and testing under the rule. We are proposing requiring the use of sampling methods that were proposed in the July 11, 1997 **Federal Register** notice (62 FR 37338, at 37341-37342, 37375-37376), which proposes modifications to the RFG/CG rule. These sampling methods include ASTM D 4057-95 (manual sampling), D 4177-95 (automatic sampling from pipelines/in-line blending), and ASTM D 5842 (this sampling method is primarily concerned with sampling where gasoline volatility is going to be tested, but it would also be an appropriate sampling method to use when testing for sulfur). We are proposing requiring use of these ASTM methods instead of the methods provided in 40 CFR part 80, Appendix D. That is because the proposed methods have been updated by ASTM, the updates have provided clarification and they have eliminated certain requirements, such as storage tank tap extensions, that are not necessary for sampling light petroleum products such as gasoline.

e. What Are the Proposed Gasoline Sample Retention Requirements?

We are proposing a refiner and importer sampling and testing program to establish the sulfur compliance of each batch of gasoline produced or

⁹⁸ Except for certain truck importers, as noted above.

⁹⁹ In addition, commercial grade butane easily meets conventional gasoline standards, but that is not the case with regard to the proposed gasoline sulfur standards.

imported. However, we are aware of the inherent drawbacks to a self-testing scheme. There is the possibility that a party might sample or test gasoline in a manner not consistent with the required procedures, or that employees might inaccurately record the test results, by mistake or otherwise. Under such a scheme, parties might also attempt to conceal a discovered violation or to save money by not correcting a violation.

In an attempt to address these concerns about self-testing, we considered the option of requiring independent sampling and testing for all gasoline, including conventional gasoline. Under current regulations, only refiners or importers of reformulated gasoline are obligated to do this. However, because of the costs of independent sampling and testing¹⁰⁰ EPA is instead proposing an alternative strategy to help ensure refinery and importer sulfur compliance. Refiners and importers would be required to retain for thirty days a representative sample from each batch of gasoline produced, and to provide such samples to the Agency upon request. By means of this option, EPA could verify the refiner test results.

This limited duration sample retention would be useful to address many of the potential problems concerning a refiner self-testing program. Through this requirement, parties would be faced with the knowledge that EPA could easily and randomly confirm the accuracy of the refiner's test results and could discover unrecorded violations. We believe that this would create an incentive for refiners to sample, test, and record their sulfur results in an accurate and truthful manner.

The Agency also is proposing that refiners be required to certify annually that the samples have been collected in the manner required under the sulfur rule. This requirement is intended to assure that refinery officials insist on accurate and honest sampling and retention of samples at their refineries. We are also proposing that specific procedures be followed by refiners to properly collect, retain, and ship the samples in a manner consistent with requirements already imposed or proposed under the RFG program. Under today's proposal, a minimum representative sample of 330 ml of each gasoline batch would need to be retained.¹⁰¹

The Agency does not believe that the proposed sulfur rule sample retention requirements would impose an undue financial burden on regulated parties. Many refineries already engage in some sample retention for their own purposes, and the retention procedures proposed in today's proposal would merely require that typical industry retention standards be applied. Shipping samples to us would entail some expense, but this shipping would only occur periodically, and would certainly cost less than hiring an independent laboratory to regularly sample and test gasoline.

The Agency requests comments on the costs and effectiveness of the proposed sample retention requirements, and invites comments on any alternative plan to promote accuracy of refiner self-testing of gasoline for sulfur compliance. In particular, we are interested in information on the cost and effectiveness of a nationwide, independent sampling and testing program

5. What Federal Enforcement Provisions Would Exist for California Gasoline and When Could California Test Methods Be Used to Determine Compliance?

a. *Requirement to Segregate Gasoline and To Use Product Transfer Document Requirements.* Today's proposal would generally exempt California gasoline from regulation under the sulfur rule for the reasons previously described in this preamble. However, today's NPRM does propose two requirements that would apply to some California gasoline. The first would require that gasoline produced outside of California, that is intended for California use, be segregated from all other gasoline at all points in the distribution system. Second, the Agency is proposing that out-of-state producers of gasoline intended for sale in California be required to create PTDs identifying the product as California gasoline, and that such PTDs be provided to all transferees of this gasoline in the distribution system. Such documentation is intended to facilitate our enforcement of the proposed sulfur control program through identifying the gasoline not covered by the federal regulation, even though it is produced in areas otherwise subject to this proposed regulation. This documentation would also assist regulated parties in identifying the gasoline as non-federally regulated to

facilitate segregation of California gasoline from federal gasoline.

The sulfur program PTD requirements for California gasoline produced out-of-state should not create any new burdens on regulated parties, since the same requirements currently apply under the RFG program.¹⁰² Today's proposal would incorporate and restate the RFG rule's PTD requirements for this California gasoline. The Agency does not believe that it is necessary to impose additional PTD requirements under the sulfur program, since the California gasoline identification requirements under the RFG rule would also satisfy the identification needs of this rule. Having the same requirements in both rules means that regulated parties that fail to produce and transfer the necessary PTD identification would be in violation of both programs.

b. *Use of California Test Methods for 49 State Gasoline.* As stated previously, we are proposing to exclude gasoline produced in California for California use from federal sulfur standards. However, refineries or importers located in California would have to meet the standards and other requirements with regard to "federal" gasoline used outside of California. Nevertheless, EPA is proposing that gasoline produced in California for sale outside of California could be tested for compliance under the federal sulfur rule using the methodologies approved by the ARB, provided that the producer complies with the procedures for such testing as already required under 40 CFR 80.81(h), which permits California test methods not identical to federal test methods to be used for conventional gasoline only.

6. What Are the Proposed Recordkeeping and Reporting Requirements?

a. *What Are the Proposed Product Transfer Document Requirements?* We are proposing that the PTDs that accompany each transfer of custody or title of gasoline that includes gasoline produced by any small refiner subject to sulfur rule individual refinery standards be required to identify the gasoline as such, including the applicable downstream cap, as an aid to enforcing the national downstream cap. Other PTD information is currently required under the RFG/conventional gasoline regulations. We believe that the additional PTD information regarding sulfur compliance required under today's proposal would impose little additional burden on industry. We request comment on this proposed requirement.

¹⁰⁰ See the discussion on this subject in the preamble to the reformulated gasoline program's final rule, 59 FR 7765 (Feb. 16, 1994).

¹⁰¹ See 40 CFR 80.65(f)(3)(F)(ii), and the Proposed Rule for Modifications to Standards and

Requirements for Reformulated and Conventional Gasoline, 62 FR 37337 *et seq.* proposed 40 CFR 80.101(i)(l)(i)(C)(iii).

¹⁰² See CFR 80.81(g).

b. *What Are the Proposed Recordkeeping Requirements?* We are proposing to require that refiners and importers keep and make available to EPA certain records that demonstrate compliance with the sulfur program standards and requirements. The RFG/CG regulations currently require refiners and importers to retain records that include much of the information proposed to be required under today's rule. As a result, we believe that the proposed reporting requirements would impose very little additional burden on these regulated parties.

We are proposing to require all parties in the gasoline distribution system, including refiners, importers, retailers, and all types of distributors to retain PTDs and records of quality assurance programs that parties conduct to establish a defense to downstream violations. All parties in the gasoline distribution system currently are required to keep PTDs for RFG. However, since there are no downstream CG standards, only refiners and importers are required to retain PTDs for conventional gasoline. Because today's proposed sulfur rule, like the RFG rule, includes downstream standards, we believe that a requirement to retain PTDs for all parties in the gasoline distribution system would be appropriate under the sulfur rule. The PTD information would help us identify the source of any gasoline found to be in violation of the sulfur standards. The PTDs would also provide downstream parties with information regarding the applicable downstream standard.

Today's proposal would require parties to keep records for a period of five years, with additional requirements for records pertaining to credits. Records pertaining to credits that were banked and never transferred to another party would need to be retained for five years after the credits are used for compliance purposes. Records pertaining to credits that were transferred would need to be retained by both parties (transferee and transferor) for ten years after the date the credits were generated (which would ensure the records are retained at least years after they are used, since use would have to occur within five years of generation even if the credits were transferred).

Most of the records that would be required to be kept for five years already are subject to that requirement by the RFG/CG rule. Five years is the applicable statute of limitations for the RFG and other fuels programs. See 28 U.S.C. 2462. We request comment on these proposed recordkeeping requirements for refiners, importers and

downstream regulated parties. In particular, we request comment on the record retention provisions specific to credits that were transferred. While we recognize that retaining records for ten years could be problematic for both parties, we believe that both parties would need to retain records so that we could be reasonably sure that credits used for compliance were appropriate. An alternative, raised earlier in this proposal, would be to give a more finite life to credits or to require, beginning in 2006, credits to be used in the same year they were generated or transferred. We welcome comments on this solution or any other way in which we can be assured that adequate records would be available should a credit transaction come into question at some date longer than five years after the transaction.

c. *What Are the Proposed Reporting Requirements?* Today's proposed rule would require refiners and importers to submit to us, on an annual basis, a report that demonstrated compliance with the applicable sulfur standards and data on individual batches of gasoline, including batch volume and sulfur content. The RFG/CG programs contain similar reporting requirements. Based on our experience with these programs, we believe that requiring an annual sulfur report and batch information would provide an appropriate and effective means of monitoring compliance with the average standards under the sulfur program. The batch data also would serve to verify that each batch of gasoline met the applicable sulfur cap standard when it left the refinery. In addition, the annual report would provide a vehicle for accounting for any sulfur credits created, sold or used to achieve compliance during the averaging period.

d. *What Are the Proposed Attest Requirements?* We are also proposing to require refiners and importers to arrange for a certified public accountant or certified internal auditor to conduct an annual review of the company's records that form the basis of the annual sulfur compliance report (called an "attest engagement"). The purpose of the attest engagement is to determine whether representations by the company are supported by the company's internal records. Attest engagements are required under the RFG/CG regulations. We believe that an attestation for sulfur could be included in a refiner's current attest engagement with little additional burden.

We believe that the proposed reporting requirements under today's rule would impose minimal additional reporting burdens on industry while providing us with information necessary

to monitor compliance with the sulfur standards. We request comment on these proposed reporting requirements.

7. What Are the Proposed Exemptions for Research, Development, and Testing?

We are proposing to exempt from the sulfur requirements gasoline used for research, development and testing purposes. We recognize that there may be legitimate research programs that require the use of gasoline with higher sulfur levels than those allowed under today's proposed rule. As a result, today's rule contains proposed provisions for obtaining an exemption from the prohibitions for persons distributing, transporting, storing, selling or dispensing gasoline that exceeded the standards, where such gasoline is necessary to conduct a research, development or testing program.

Under the proposal, parties would be required to submit to EPA an application for exemption that would describe the purpose and scope of the program and the reasons why use of the higher sulfur gasoline is necessary. In approving any application, EPA would impose reasonable conditions such as recordkeeping, reporting and volume limitations. We believe that the proposal includes the least onerous requirements for industry that also would ensure that higher sulfur gasoline is used only for legitimate research purposes. We request comment on these proposed provisions. We also request comment on whether in lieu of an approval process, parties should be required to submit the required information to EPA at the start of the program, and annually thereafter, with the condition that EPA could provide a party with written notification in the event the Agency determines the exemption is not justified. We also request comment on whether the regulations should impose a volume limit on the amount of gasoline that could be used in a research program, as a way of minimizing any adverse environmental effects that could result from allowing such an exemption from the sulfur requirements.

8. What Are the Proposed Liability and Penalty Provisions for Noncompliance?

Today's proposed rule contains provisions for liability and penalties that are similar to the liability and penalty provisions of the RFG and other fuels regulations.¹⁰³ Under the proposed

¹⁰³ See section 80.5 (penalties for fuels violations); section 80.23 (liability for lead violations); section 80.28 (liability for volatility violations); section 80.30 (liability for diesel violations); section 80.79 (liability for violation of

rule, regulated parties would be liable for committing certain prohibited acts, such as selling or distributing gasoline that does not meet the sulfur standards, or causing others to commit prohibited acts. In addition, parties would be liable for a failure to meet certain affirmative requirements, or causing others to fail to meet affirmative requirements. For example, persons who produce or import gasoline would be liable for a failure to fulfill any of the requirements for refiners and importers, including the sampling and testing requirements, the reporting and attest audit requirements, the averaging requirements, the small refinery requirements, and the credit creation and trading requirements. In such cases the regulated party would also be liable for any violation of the sulfur standard based on corrected information. All parties in the gasoline distribution system, including refiners, importers, distributors, carriers, retailers, and wholesale purchaser-consumers, would be liable for a failure to fulfill the recordkeeping requirements and the PTD requirements.

a. Presumptive Liability Scheme of Current EPA Fuels Programs. Current EPA fuels programs include a presumptive liability scheme for violations of prohibited acts. Under this approach, presumptive liability is imposed on two types of parties: (1) That party in the gasoline distribution system that controls the facility where the violation was found or had occurred; and (2) those parties, typically upstream in the gasoline distribution system from the initially listed party, (such as the refiner, reseller, and any distributor of the gasoline), whose prohibited activities could have caused the program non-conformity to exist.¹⁰⁴ This presumptive liability scheme has worked well in enabling us to enforce our fuels programs, since it creates comprehensive liability for substantially all the potentially responsible parties. The presumptions of liability may be rebutted by establishing an affirmative defense.

To clarify the inclusive nature of these presumptive liability schemes, today's proposed rule would explicitly include causing another person to commit a prohibited act and causing the presence of non-conforming gasoline to be in the distribution system as prohibitions. This is consistent with the provisions and implementation of other fuels programs.

RFG prohibited acts); section 80.80 (penalties for RFG/conventional gasoline violations).

¹⁰⁴ Additional type of liability, vicarious liability, is also imposed on branded refiners under these fuels programs.

Today's proposed rule, therefore, provides that most parties involved in the chain of distribution would be subject to a presumption of liability for actions prohibited, including causing non-conforming gasoline to be in the distribution system and causing violations by other parties. Like the other fuels regulations, a refiner also would be subject to a presumption of vicarious liability for violations by any downstream facility that displays the refiner's brand name, based on the refiner's ability to exercise control at these facilities. Carriers, however, would be presumed liable only for violations arising from product under their control or custody, and not for causing non-conforming gasoline to be in the distribution system, except where we have specific evidence of causation.

b. Affirmative Defenses for Each Presumptively Liable Party. The proposal includes affirmative defenses for each party that is deemed presumptively liable for a violation, and all presumptions of liability are refutable. The proposed defenses are similar to the defenses available to parties for violations of the RFG regulations. We believe that these defense elements set forth reasonably attainable criteria to rebut a presumption of liability. The defenses include a demonstration that: (1) the party did not cause the violation; and (2) except for retailers and wholesale purchaser-consumers, the party conducted a quality assurance program. For parties other than tank truck carriers, the quality assurance program would be required to include periodic sampling and testing of the gasoline. For tank truck carriers, the quality assurance program would not need to include periodic sampling and testing, but in lieu of sampling and testing, the carrier would be required to demonstrate evidence of an oversight program for monitoring compliance, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records concerning gasoline quality and delivery.

As in the other fuels regulations, branded refiners would be subject to more stringent standards for establishing a defense because of the control such refiners have over branded downstream parties. Under today's rule, in addition to the other defense elements, branded refiners would be required to show that the violation was caused by an action by another person in violation of law, an action by another person in violation of a contractual agreement with the refiner, or the action of a distributor not subject to a contract

with the refiner but engaged by the refiner for the transportation of the gasoline.

Based on experience with other fuels programs, we believe that a presumptive liability approach would increase the likelihood of identifying persons who cause violations of the sulfur standards. We normally do not have the information necessary to establish the cause of a violation found at a facility downstream of the refiner or importer. We believe that those persons who actually handle the gasoline are in the best position to identify the cause of the violation, and that a refutable presumption of liability would provide an incentive for parties to be forthcoming with information regarding the cause of the violation. In addition to identifying the party that caused the violation, providing evidence to rebut a presumption of liability would serve to establish a defense for the parties who are not responsible. Presumptive liability is familiar to both industry and to us, and we believe that this approach would make the most efficient use of EPA's enforcement resources. For these reasons, we are proposing a liability scheme for the sulfur program based on a presumption of liability. We request comment on the proposed liability provisions.

c. Penalties for Violations. Section 211(d)(1) of the CAA provides for penalties for violations of the fuels regulations.¹⁰⁵ Today's rule proposes penalty provisions that would apply this CAA penalty provision to the sulfur rule. The proposed provisions would subject any person who violates any requirement or prohibition of the sulfur rule to a civil penalty of up to \$27,500 for every day of each such violation and the amount of economic benefit or savings resulting from the violation. A violation of the applicable average sulfur standard would constitute a separate day of violation for each day in the averaging period. A violation of a sulfur cap standard would constitute a

¹⁰⁵ Section 211(d)(1) reads, in pertinent part:

(d)(1) Civil Penalties.—Any person who violates * * * the regulations prescribed under subsection (c) * * * of this section * * * shall be liable to the United States for a civil penalty of not more than the sum of \$25,000 for every day of such violation and the amount of economic benefit or saving resulting from the violation. * * * Any violation with respect to a regulation prescribed under subsection (c) * * * of this section which establishes a regulatory standard based upon a multi-day averaging period shall constitute a separate day of violation for each and every day in the averaging period. * * *

Pursuant to the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note), the maximum penalty amount prescribed in section 211(d)(1) of the CAA was increased to \$27,500. (See 40 CFR part 19.)

separate day of violation for each day the gasoline giving rise to the violation remained in the gasoline distribution system. The length of time the gasoline in question remained in the distribution system would be deemed to be twenty-five days unless there is evidence that the gasoline remained in the gasoline distribution system for fewer than or more than twenty-five days. The penalty provisions proposed in today's rule are similar to the penalty provisions for violations of the RFG regulations. EPA requests comment on these provisions.

9. How Would Compliance With the Sulfur Standards Be Determined?

We have often used a variety of evidence to establish non-compliance with requirements imposed under our current fuels regulations. Test results of the content of gasoline have been used to establish violations, both in situations where the sample has been taken from the facility at which the violation is found, and where the sample has been obtained from other parties' facilities when such test results have had probative value of the gasoline's characteristics at points upstream or downstream. The Agency has also commonly used documentary evidence to establish non-compliance or a party's liability for non-compliance. Typical documentary evidence has included transfer documents identifying the gasoline as inappropriate for the facility it is being delivered to, or identifying parties having connection with the non-complying gasoline.

a. What Evidence Could Be Used to Establish Sulfur Rule Violations and Liability for these Violations? A recent EPA Environmental Appeals Board decision, (In re: Commercial Cartage Company, Docket No. CAA-93-H-002, CAA Appeal No. 97-9) (the "Cartage" decision), interpreted the regulatory language of one of EPA's fuels programs as restricting the evidence that the Agency may use in establishing a violation of a standard under that program. Under the Cartage decision, in order to establish the existence of a violation of the gasoline volatility standards¹⁰⁶ at a particular carrier or retail outlet facility, we would have to produce non-compliant test results obtained only by using the regulatory method and only from a sample taken from the facility itself. Other potentially persuasive evidence establishing volatility standard violations would not be permitted under the Cartage

decision's interpretation of the volatility rule.¹⁰⁷

We believe that it would best serve the purposes of the proposed sulfur rule to not limit the evidence that may be used to show whether a violation occurred or liability for that violation. Our enforcement experience in other programs has shown that the Cartage-permitted evidence (test results from samples taken only from a particular facility, and using only the regulatory test methods) often does not exist, while other persuasive evidence of the existence of the violations does exist. If we are not able to use other forms of persuasive evidence to establish violations or other necessary facts short of test results such as those permitted by the volatility regulations under the Cartage interpretation, violators will continue to avoid liability for their actions.

To ensure that evidence with probative value could be used under the sulfur rule, the Agency is making explicit in today's proposal that any probative evidence could be used to establish compliance or non-compliance with the sulfur standards and requirements and liability for non-compliance. This would not remove or change the obligation on refiners and importers to perform testing on each batch of gasoline using the procedures authorized under these regulations. Compliance or non-compliance with sulfur standards would continue to be based on regulatory test methods. However, other probative evidence could be used to determine compliance with sulfur standards if the evidence is relevant to whether the sulfur content would have been in compliance if the appropriate sampling and testing methodologies had been performed.

Under today's proposal, the permitted probative evidence specifically includes information obtained from any source or any location, since Agency enforcement experience has proven the value of such widely-obtained material. Respondents in EPA enforcement actions would have the same right to present other evidence of compliance with the sulfur rule as the Agency would have to establish non-compliance.

VII. Public Participation

We received many comments from a range of interested parties on our Tier 2 Report to Congress. We have also received comments as part of the our outreach to small entities (see section V.B.). These comments have been very valuable in developing this proposal, and we look forward to additional

comment during the rulemaking process. You can find comments on the issuance of Tier 2 standards and gasoline sulfur control we received prior to this proposed action in the rulemaking docket, and many of them are discussed in the context of various issues in this preamble. We have considered comments received during the development of the proposal and have addressed a number of them in today's document.

A. Comments and the Public Docket

Publication of this document opens a formal comment period on this proposal. You may submit comments during the period indicated under **DATES** above. The Agency encourages all parties that have an interest in the program described in this document to offer comment on all aspects of the action. Throughout this proposal you will find requests for specific comment on various topics.

The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. We also encourage commenters who disagree with the proposed program to suggest and analyze alternate approaches to meeting the air quality goals of this proposed program. You should send all comments, except those containing proprietary information, to the EPA's Air Docket (see **ADDRESSES**) before the date specified above for the end of the comment period.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments. Such submissions should be labeled as "Confidential Business Information" and be sent directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**), not to the public docket. This will help ensure that proprietary information is not placed in the public docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a nonconfidential version of the document that summarizes the key data or information must be sent to the docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies a submission when we receive it, we will make it available to the public without further notice to the commenter.

B. Public Hearings

We will hold four public hearings as noted under "DATES" above. If you would like to present testimony at the

¹⁰⁶ EPA's gasoline volatility regulations are found at 40 CFR 80.27 and 80.28.

¹⁰⁷ See 40 CFR 80.27(b) and 80.28(b) and (e).

public hearings, we ask that you notify the contact person listed above two weeks before the date of the hearing at which you plan to testify. You should include in this notification the date of the hearing at which the testimony will be presented, an estimate of the time required for the presentation, and any need for audio/visual equipment. We also suggest that sufficient copies of the statement or material to be presented be made available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material before the hearing.

The hearings will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet will be available at the hearings for scheduling the order of testimony. At the scheduled two day hearing, we suggest that testimony that primarily pertains to the proposed fuel requirements be presented on the first day of the hearings and that testimony that primarily pertains to the proposed vehicle standards (and/or other aspects of this proposal) be presented on the second day of the hearings. Written transcripts of the hearings will be prepared. The official record of the hearings will be kept open for 30 days after the hearing dates to allow submittal of supplementary information.

VIII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local, or tribal governments or communities;

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposal is a "significant regulatory action" because the proposed vehicle standards, gasoline sulfur standards, and other proposed regulatory provisions, if implemented, would have an annual effect on the economy in excess of \$100 million. Accordingly, a Draft Regulatory Impact Analysis (RIA) has been prepared and is available in the docket for this rulemaking. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Written comments from OMB on today's action and responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. In response to the provisions of this statute, EPA has identified industries subject to this proposed rule and has provided information to, and received comment from, small entities and representatives of small entities in these industries. An Initial Regulatory Flexibility Analysis (RFA) has been prepared by the Agency to evaluate the economic impacts of today's proposal on small entities.¹⁰⁸ The key elements of the Initial RFA include:

- The number of affected small entities;
- The projected reporting, record keeping, and other compliance requirements of the proposed rule, including the classes of small entities that would be affected and the type of professional skills necessary for preparation of the report or record;
- Other federal rules that may duplicate, overlap, or conflict with the proposed rule; and,
- Any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize significant economic impacts of the proposed rule on small entities.

The Agency convened a Small Business Advocacy Review Panel (the Panel) under section 609(b) of the Regulatory Flexibility Act as added by SBREFA. The purpose of the Panel was to collect the advice and recommendations of representatives of small entities that could be affected by today's proposed rule and to report on those comments and the Panel's findings as to issues related to the key elements of the Initial Regulatory Flexibility Analysis under section 603 of the Regulatory Flexibility Act. The report of the Panel has been placed in the rulemaking record.¹⁰⁹

The contents of today's proposal and the Initial Regulatory Flexibility Analysis reflect the recommendations in the Panel's report. We summarize our outreach to small entities and our responses to the recommendations of the Panel below. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts.

1. Potentially Affected Small Businesses

The Initial Regulatory Flexibility Analysis identified small businesses from the industries in the following table as subject to the provisions of today's proposed rule:

TABLE VIII.1.—INDUSTRIES CONTAINING SMALL BUSINESSES POTENTIALLY AFFECTED BY TODAY'S PROPOSED RULE

Industry	NAICS ^a codes	SIC ^b codes	Defined by SBA as a small business if: ^c
Motor Vehicle Manufacturers	336111 336112 336120	3711	<1000 employees.
Alternative Fuel Vehicle Converters	336311 541690 336312	3592 8931 3714	<500 employees. <750 employees.

¹⁰⁸ The Initial RFA is contained in Chapter 8 of the Regulatory Impact Analysis.

¹⁰⁹ Report of the Small Business Advocacy Panel on Tier 2 Light-Duty Vehicle and Light-Duty Truck Emission Standards, Heavy-Duty Gasoline Engine

Standards, and Gasoline Sulfur Standards, October 1998.

TABLE VIII.1.—INDUSTRIES CONTAINING SMALL BUSINESSES POTENTIALLY AFFECTED BY TODAY'S PROPOSED RULE—Continued

Industry	NAICS ^a codes	SIC ^b codes	Defined by SBA as a small business if: ^c
Independent Commercial Importers of Vehicles and Vehicle Components	422720	5172	<100 employees. <\$5 million annual sales.
	454312	5984	
	811198	7549	
	541514	8742	<\$5 million annual sales.
	811112	7533	
	811198	7549	
Petroleum Refiners	541514	8742	<1500 employees.
Petroleum Marketers and Distributors	324110	2911	
	422710	5171	
	422720	5172	<100 employees.

^a North American Industry Classification System.

^b Standard Industrial Classification system.

^c According to SBA's regulations (13 CFR 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

The Initial RFA identified about 15 small petroleum refiners, several hundred small petroleum marketers, and about 15 small certifiers of covered vehicles (belonging to the other categories in the above table) that would be subject to the proposed rule.

2. Small Business Advocacy Review Panel and the Evaluation of Regulatory Alternatives

The Small Business Advocacy Review Panel was convened by EPA on August 27, 1998. The Panel consisted of representatives of the Small Business Administration (SBA), the Office of Management and Budget (OMB), and EPA. During the development of today's proposal, EPA and the Panel were in contact with representatives from the small businesses that would be subject to the provisions in today's proposal. In addition to verbal comments from industry noted by the Panel at meetings and teleconferences, written comments were received from each of the affected industry segments or their representatives. These comments, alternatives suggested by the Panel to mitigate adverse impacts on small businesses, and issues the Panel requested EPA take additional comment on are contained in the report of the Panel and are summarized below. Today's proposal incorporates or requests comment on the alternatives and issues suggested by the Panel.

Fuel-Related Small Business Issues

Most of the small refiners stated that if they were required to achieve 30 ppm sulfur levels on average with an 80 ppm per-gallon cap without some regulatory relief, they would be forced out of business. Thus, the Panel devoted much attention to regulatory alternatives to address this concern. Most small refiners strongly supported delaying

mandatory compliance for their facilities. On the other hand, most small refiners stated that a phase-in of gasoline sulfur standards would not be helpful because it would be more cost-effective for them to install the maximum technology required for the most stringent sulfur levels that would ultimately be imposed.

The Society of Independent Gasoline Marketers of America (SIGMA) commented that EPA should consider giving relief not only to refiners that meet the SBA definition of small refiner but also to refineries with relatively small production capacity that are owned by large refining companies. This was because a refinery with a small production capacity would operate essentially as an SBA-defined small refiner would. SIGMA also noted that small gasoline marketers would be affected by the closure of any refinery with small production capacity, whether it was owned by a large company or an SBA-defined small refining company.

The Panel recommended that small refiners be given a four to six year period of relief during which less stringent gasoline sulfur requirements would apply. The Panel also advised that EPA specifically request comment on an alternative duration of ten years for the relief period. Small refiners would be assigned interim sulfur standards during this relief period based on their current individual refinery sulfur levels. Following this relief period, small refiners would be required to meet the industry-wide standard, although temporary hardship relief would be available on a case-by-case basis. The additional time provided to small refiners before compliance with the industry-wide standard was required would allow (1) new sulfur-reduction technologies to be proven-out

by larger refiners, (2) the costs of advanced technology units to drop as the volume of their sales increases, (3) industry engineering and construction resources to be freed-up, and (4) the acquisition of the necessary capital by small refiners. The provisions that EPA is proposing for small refiners and our requests for specific comments are found in Section IV.C.3.b.above. The Panel concluded that adding gasoline sulfur to the fuel parameters already being sampled and tested by gasoline marketers would likely result in little, if any, additional burden. Therefore, the Panel did not recommend any special provision for gasoline marketers.

Vehicle-Related Small Business Issues

Independent commercial importers of vehicles (ICIs) suggested that the new emissions standards be phased-in with the phase-in schedule based on the small vehicle manufacturer's annual production volume. Secondly, the ICIs requested that small testing laboratories be permitted to use older technology dynamometers than proposed for use by the Agency. Finally, the ICIs commented that the certification process should be waived for certain foreign vehicles. Small-volume vehicle manufacturers (SVMs) stated that a phase-in of Tier-2 emissions standards is essential. They further stated that SVMs should not be required to comply until the end of the phase-in period, which should not be before model year 2007. The SVMs also stated that a case-by-case hardship relief provision should be provided for their members. SVMs requested that a credit program be established with incentives for larger manufacturers to make credits available to SVMs in meeting their compliance goals.

Based on the above comments, the Panel advised that EPA consider several

alternatives, individually or in combination, for the potential relief that they might provide to small certifiers of vehicles. Our requests for comments on these alternatives are found in Section V.A.8 above.

The Initial Regulatory Flexibility Analysis evaluates the financial impacts of the proposed vehicle standards and fuel controls on small entities. EPA believes that the regulatory alternatives considered in today's document will provide substantial relief to small business from the potential adverse economic impacts of complying with today's proposed rule.

C. Paperwork Reduction Act

The information collection requirements (ICR) in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information unless the information collection request displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The information collection requirements associated with today's proposed rule belong to two distinct categories: (1) Those that pertain to the proposed amendments to the vehicle certification requirements, and (2) those that pertain to the proposed requirements for the control of gasoline sulfur content. The information collection requirements are contained in two separate ICR documents according to the category to which they belong.¹¹⁰

The *Paperwork Reduction Act* stipulates that ICR documents estimate the burden of activities that would be required of regulated parties within a three year time period. Consequently, the ICR documents that accompany today's proposed rule provide burden estimates for the activities that would be required under the first three years of the proposed program.

ICRs Pertaining to the Proposed Amendments to Vehicle Certification Requirements

The information collection burden to vehicle certifiers associated with the proposed amendments to the vehicle certification requirements in today's document pertain to the proposed fleet-average NO_x standard and emission credits provisions. These proposed requirements are very similar to those under the voluntary National Low Emission Vehicle (NLEV) program, which includes a fleet-average standard for nonmethane hydrocarbon organic gases (NMOG) and associated emission credits provisions. The hours spent annually by a given vehicle certifier on the information collection activities associated with the proposed recordkeeping and reporting requirements depends upon certifier-specific variables, including: the scope/variety of their product line as reflected in the number of test groups and strategy used to comply with the proposed fleet-average NO_x standard, the extent they utilize the proposed emissions credits provisions, and whether they opted into the NLEV program. Vehicle certifiers that use the proposed provisions for early banking of emission credits would be subject to the associated information collection requirements as early as September 1, 2000.¹¹¹ All vehicle certifiers would be required to comply with the information collection requirements associated with the amendments to the vehicle certification program beginning September 1, 2003.¹¹² The ICR document for the proposed amendments to the vehicle certification program provides burden estimates for all of the associated information collection requirements. The total information collection burden associated with the proposed amendments to the vehicle certification requirements is estimated at 8,361 hours and \$564,172 annually for the certifiers of light-duty vehicles and light-duty trucks.

ICRs Pertaining to the Proposed Requirements for Gasoline Sulfur Control

The information collection burden to gasoline refiners, importers, marketers, distributors, retailers and wholesale purchaser-consumers (WPCs), and users of research and development (R&D) gasoline pertain to the proposed

gasoline sulfur control requirements. The scope of the recordkeeping and reporting requirements for each regulated party, and therefore the cost to that party, reflects the party's opportunity to create, control, or alter the sulfur content of gasoline. As a result, refiners and importers would have significant requirements, which are necessary both for their own tracking, and that of downstream parties, and for EPA enforcement. Parties downstream from the gasoline production or import point, such as retailers, would have minimal burdens that are primarily associated with the transfer and retention of product transfer documents. Many of the reporting and recordkeeping requirements for refiners and importers regarding the sulfur content of gasoline on which the proposed rule would rely currently exist under EPA's Reformulated Gasoline (RFG) and Anti-Dumping programs. The ICR for the RFG program covered start up costs associated with reporting gasoline sulfur content under the RFG program. Consequently, much of the cost of the information collection requirements under the proposed gasoline sulfur control program has already been accounted for under the RFG program ICR.

The information collection requirements under the proposed sulfur control program would evolve over time as the program is phased-in. Beginning July 1, 2000, certain requirements would apply to parties that voluntarily opt to generate credits for early sulfur reduction under the proposed average banking and trading (ABT) provisions. Many of the requirements would not become applicable until the beginning of the sulfur control program on October 1, 2003, when all refiners would be required to meet the proposed standards. The information collection requirements under the proposed program would become stable after January 1, 2008, when the optional small refiner provisions would expire.¹¹³

The ICR document for the proposed gasoline sulfur control program provides burden estimates for the activities that would be required under the first three years of the sulfur control program, from July 1, 2000 through June 30, 2003. The burden associated with activities that would be required after June 30, 2003 will be estimated in later ICRs. The initial ICR for the gasoline sulfur control program, however, does

¹¹⁰ The information collection requirements associated with the proposed amendments to the requirements for vehicle certification are contained in the Information Collection Request entitled "Amendments to the Reporting and Recordkeeping Requirements for Motor Vehicle Certification Under the Proposed Tier 2 Rule". The information collection requirements associated with the proposed gasoline sulfur control program are contained in the Information Collection Request entitled "Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule".

¹¹¹ These ICRs would become effective on the date that model year 2001 vehicles are introduced into commerce. EPA assumes that September 1, 2000 is the earliest date that model year 2001 vehicles will be marketed.

¹¹² Assuming model year 2004 vehicles are introduced into commerce on this date.

¹¹³ A refiner could petition EPA for an extension of the small refiner provisions beyond January 1, 2008, based on hardship.

provide a qualitative characterization of all of the required activities and associated burdens for the various regulated parties as they develop, and until they become stable after January 1, 2008.

We estimate that the total burden of the information collection requirements that would be applicable during the first three years of the proposed gasoline sulfur control program would be 42,479 hours and \$2,149,865 annually. The estimated annual burden for the various regulated entities under the initial three year period of the proposed gasoline sulfur control program are as follows:

- Refiners: 31,231 hours, \$1,879,822
- Importers: 40 hours, \$2,067
- Pipelines: 85 hours, \$2,785
- Terminals: 1,700 hours, \$55,700
- Truckers: 3,333 hours, \$118,000
- Retailers/WPCs: 6,087 hours, \$ 91,298
- R&D Gasoline Users: 3 hours, \$193

Total Burden of the Proposed ICRs

We estimate that the total burden of the recordkeeping and reporting requirements associated with the proposed vehicle certification and gasoline sulfur control requirements would be at 50,840 hours and \$2,714,037 annually over the first three years that these requirements would be in effect.

Comments on EPA's Burden Estimates

We request comments on the Agency's need for the information proposed to be collected, the accuracy of our estimates of the associated burdens, and any suggested methods for minimizing the burden, including the use of automated techniques for the collection of information. Comments on the ICR should be sent to: the Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2136), 401 M Street, SW., Washington, DC 20460, marked "Attention: Director of OP;" and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any such correspondence. OMB is required to make a decision concerning the ICR between 30 and 60 days after publication of a proposed rule. Therefore, comments to OMB on the ICR are most useful if received within 30 days of the publication date of today's document. Any comments from OMB and from the public on the information collection requirements in today's proposal will be placed in the docket and addressed by EPA in the final rule.

Copies of the ICR documents can be obtained from Sandy Farmer, Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, SW., Washington, DC 20460, or by calling (202) 260-2740. Insert the ICR title and/or OMB control number in any correspondence. Copies may also be downloaded from the internet at <http://www.epa.gov/icr>.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more for any single year. Before promulgating a rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if EPA provides an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on

any of these governmental entities. Nothing in the proposed rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. EPA believes that the proposed program represents the least costly, most cost-effective approach to achieve the air quality goals of the proposed rule. The cost-benefit analysis required by the UMRA is discussed in Section IV.D. above and in the Draft RIA. See the "Administrative Designation and Regulatory Analysis" section in today's preamble (VIII.A.) for further information regarding these analyses.

2. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or Tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule would not create a mandate on state, local or Tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

3. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance

costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. The proposed motor vehicle emissions, motor vehicle fuel, and other related requirements for private businesses in today's document would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, EPA's conclusions regarding the impacts from the implementation of today's proposed rule discussed in the other sections of today's document are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104-113, directs EPA to use voluntary consensus standards in its regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

This proposed rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are proposed in today's document. The standards referenced in today's proposed rule involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's proposal are all voluntary consensus standards. The motor vehicle emissions measurement standards referenced in today's proposed rule are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry. EPA is not aware of any voluntary consensus standards for the measurement of motor vehicle emissions. Therefore, the Agency proposes to use the existing EPA-developed standards found in 40 CFR part 86 for the measurement of motor vehicle emissions.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13045: Children's Health Protection

Executive Order (E.O.) 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5-501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is subject to the Executive Order because it is an economically significant regulatory action as defined by E.O. 12866 and it concerns in part an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

This rulemaking will achieve significant reductions of various emissions from passenger cars and light trucks, primarily NO_x, but also NMOG and PM. These pollutants raise concerns regarding environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children, such as impacts from ozone, PM and certain toxic air pollutants. See Section III of this proposal and the RIA for a further discussion of these issues.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies proposed in this rulemaking will further reduce air toxics and the related adverse impacts on children's health. EPA will be addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking that EPA will initiate in the near future under section 202(l) of the Act. That rulemaking will address the emissions of hazardous air pollutants from vehicles and fuels, and the appropriate level of control of HAPs from these sources.

In this proposal, EPA has evaluated several regulatory strategies for reductions in emissions from passenger cars and light trucks. (See sections IV, V, and VI of this proposal as well as the RIA.) For the reasons described there, EPA believes that the strategies proposed are preferable under the Clean Air Act to other potentially effective and reasonably feasible alternatives considered by the Agency, for purposes of reducing emissions from these sources as a way of helping areas achieve and maintain the NAAQS for ozone and PM. Moreover, EPA believes that it has selected for proposal the most stringent and effective control reasonably feasible at this time, in light of the technology and cost requirements of the Act.

IX. Statutory Provisions and Legal Authority

Statutory authority for the vehicle controls proposed in today's document can be found in sections 202, 206, 207, 208, and 301 of the Clean Air Act (CAA), as amended, 42 U.S.C. sections 7521, 7525, 7541, and 7601.

Statutory authority for the fuel controls proposed in today's document comes from section 211(c) of the CAA, which allows EPA to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment. Both criteria are satisfied for

the proposed gasoline sulfur controls. Additional support for the procedural and enforcement-related aspects of the fuel's controls in today's proposal, including the proposed record keeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Fuel Additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 85

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 1, 1999.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, we propose to amend parts 80, 85 and 86 of title 40, of the Code of Federal Regulations as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.2 is amended by removing and reserving paragraph (aa) and revising paragraphs (h), (s), (w) and (gg) to read as follows:

§ 80.2 Definitions.

* * * * *

(h) *Refinery* means any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.

* * * * *

(s) *Gasoline blending stock, blendstock, or component* means any liquid compound which is blended with

other liquid compounds to produce gasoline.

* * * * *

(w) *Previously certified gasoline* means gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards for reformulated gasoline, conventional gasoline or gasoline sulfur, as appropriate.

* * * * *

(aa) [Reserved]

* * * * *

(gg) *Batch of gasoline* means a quantity of gasoline that is homogeneous with regard to those properties that are specified for conventional or reformulated gasoline.

* * * * *

3. Section 80.46 is amended by revising paragraphs (a) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

(a) *Sulfur.* Sulfur content must be determined by using one of the following methods:

(1) *Primary method.* American Society for Testing and Materials (ASTM) standard method D-2622-98, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry."

(2) *Alternative method.* ASTM D-5453-93, entitled "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor fuels and Oils by Ultraviolet Fluorescence."

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D-2622-98, D-5453-93, D-3606-92, D-1319-93, D-4815-93, and D-86-90 with the exception of the degrees Fahrenheit figures in Table 9 of D-86-90, are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE-131), room M-1500, U.S. Environmental Protection Agency, Docket No. A-97-03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

4. Subpart H is added to read as follows:

Subpart H—Gasoline Sulfur

General Information

Sec.

80.180 What are the implementation dates for the gasoline sulfur program?

80.185 [Reserved]

80.190 Am I required to register with EPA under the sulfur program?

Gasoline Sulfur Standards

80.195 What are the gasoline sulfur standards for refiners and importers?

80.200 What gasoline is subject to the sulfur standards?

80.205 How is compliance with the annual average sulfur level determined?

80.210 What sulfur standards apply to gasoline downstream from refineries and importers?

80.215 What requirements apply to oxygenate blenders?

80.220 [Reserved]

Small Refiner Provisions

80.225 What is the definition of a small refiner?

80.230 Who is not eligible for the small refiner provisions?

80.235 How does a refiner obtain approval as a small refiner?

80.240 What are the small refiner gasoline sulfur standards?

80.245 How does small refiner apply for a sulfur baseline?

80.250 How is the small refiner sulfur baseline determined?

80.255 [Reserved]

80.260 What are the procedures and requirements for obtaining a hardship extension?

80.265 How will the EPA approve or disapprove of my hardship extension application?

80.270-80.275 [Reserved]

Sulfur Averaging, Banking, Trading—General Information

80.280 What is the sulfur Averaging, Banking and Trading (ABT) program?

80.285 Who may participate in the sulfur ABT program?

Sulfur ABT Program—Baseline

80.290 How do I apply for a sulfur baseline?

80.295 How is a refinery or importer sulfur baseline determined?

80.300 What if I did not produce or import gasoline during 1997 or 1998?

Sulfur ABT Program—Credit Generation

80.305 How are credits generated during the time period 2001 through 2003?

80.310 How are credits generated beginning in 2004?

Sulfur ABT Program—Credit Use

80.315 How are credits used?

80.320 What are the reporting requirements for the sulfur ABT program?

80.325 [Reserved]

Sampling, Testing and Retention Requirements for Refiners and Importers

80.330 What are the sampling and testing requirements for refiners and importers?

- 80.335 What gasoline sample retention requirements apply to refiners and importers?
- 80.340 What alternative standards, sampling and testing requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?
- 80.345 [Reserved]
- 80.350 What alternative sulfur standards, sampling and testing requirements apply to importers who transport gasoline by truck?
- 80.355 [Reserved]

Recordkeeping and Reporting Requirements

- 80.360 What are the product transfer document requirements?
- 80.365 What records must be kept?
- 80.370 What are the annual reporting requirements?

Exemptions

- 80.375 What requirements apply to California gasoline?
- 80.380 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

Violation Provisions

- 80.385 What acts are prohibited under the gasoline sulfur program?
- 80.390 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?
- 80.395 Who is liable for violations under the gasoline sulfur program?
- 80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?
- 80.405 What penalties am I subject to?

Provisions for Foreign Refiners With Individual Sulfur Baselines

- 80.410 What are the additional requirements for gasoline produced at foreign refineries having individual small refiner sulfur baselines?

Attest Engagements

- 80.415 What are the attest engagement requirements for gasoline sulfur compliance?

Subpart H—Gasoline Sulfur

General Information

§ 80.180 What are the implementation dates for the gasoline sulfur program?

(a) *July 1, 2000.* Deadline for submittal of sulfur baseline determinations for averaging, banking and trading program per § 80.290.

(b) *June 1, 2002.* Deadline for small refiner applications per § 80.235.

(c) *October 1, 2003.* Per-gallon caps apply, per § 80.195 or § 80.240, as applicable.

(d) *January 1, 2004.* Refinery and importer average standards apply and corporate pool average gasoline standards apply, per § 80.195. Small refinery average standards apply per § 80.240.

(e) *February 1, 2004.* Downstream caps apply, per § 80.210.

(f) *January 1, 2005.* Corporate pool average standards and per-gallon caps are made more stringent per § 80.195.

(g) *January 1, 2006.* Corporate pool average gasoline standards no longer apply. Per-gallon caps are made more stringent per § 80.195.

(h) *June 30, 2007.* Deadline for small refiner hardship extension applications per § 80.260.

(i) *January 1, 2008.* With the exception of gasoline produced by small refiners with approved hardship extensions, every batch of gasoline is subject to the 80 ppm cap. With the exception of small refiners with approved hardship extensions, refinery and importer average gasoline sulfur standards apply, per § 80.195.

(j) *January 1, 2010.* Every batch of gasoline is subject to the 80 ppm cap. Refinery and importer average gasoline sulfur standards apply, per § 80.195.

§ 80.185 [Reserved]

§ 80.190 Am I required to register with EPA under the sulfur program?

(a) Each refiner and importer must register with EPA according to the procedures specified in this section.

(b) Refiners and importers subject to the standards in § 80.195 who are registered by EPA under § 80.76(a) are deemed to be registered for purposes of this subpart. Refiners and importers subject to the standards in § 80.195 who are not registered by EPA under § 80.76(a) must provide to EPA the information required by § 80.76 by November 1, 2003 or not later than three months in advance of the first date that such person produces or imports gasoline, whichever is later.

(c) Refiners and individual refineries that are registered by EPA under § 80.76(a) and have established small refiner individual refinery standards status under § 80.235(f) are deemed to be registered for purposes of this subpart. Refiners having any refinery subject to the standards in § 80.240 who are not registered by EPA under § 80.76(a) must provide to EPA the information required by § 80.76 by June 1, 2002.

(d) Any refiner or importer who plans to generate credits in any year prior to 2004 must register with us no later than November 1 of the year prior to the first year of credit generation.

Gasoline Sulfur Standards

§ 80.195 What are the gasoline sulfur standards for refiners and importers?

(a)(1) The gasoline sulfur standards for refiners and importers, excluding small refiners subject to the standards at § 80.240, are shown in Table 1 of this section.

(2) The averaging period is January 1 through December 31 of each year. For each averaging period, a refiner's or importer's average sulfur level must be no greater than the levels specified in Table 1 of this section, as follows:

TABLE 1.—GASOLINE SULFUR STANDARDS

	For the averaging period beginning		
	January 1, 2004	January 1, 2005	January 1, 2006+
Refinery or Importer Average, ppm	30	30	30
Corporate Pool Average, ppm	120	90	^(b) 80
Per-Gallon Cap, ppm	^a 300	180	80

^a This per-gallon cap standard must be met beginning October 1, 2003.

^b Not applicable.

(b) The refinery or importer average gasoline sulfur standard.

(1) The refinery or importer average gasoline sulfur standard is the

maximum average sulfur level, measured in parts per million (ppm), allowed for the combined reformulated

and conventional gasoline produced at a refinery or imported by an importer

during each calendar year starting January 1, 2004.

(2) The annual average sulfur level is calculated as specified in section § 80.205.

(3) The refinery or importer average gasoline sulfur standard may be met using credits according to § 80.315, or any other potential sources of credits or allowances, if applicable.

(c) The corporate pool average gasoline sulfur standard applicable in 2004 and 2005 is the maximum average sulfur level, in ppm, allowed for a refiner's or importer's combined reformulated and conventional gasoline production from all of a refiner's refineries and all gasoline imported by an importer in a calendar year. The corporate pool average is determined by volume-weighting each refinery's and importer's actual annual average sulfur levels by their respective production or import volumes, as specified in § 80.205.

(d) The per-gallon cap standard specified in Table 1 of this section for the averaging period beginning January 1, 2004, must be met beginning October 1, 2003.

§ 80.200 What gasoline is subject to the sulfur standards?

All gasoline is subject to the standards in this subpart, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or dispensed for use in motor vehicles.

(b) California gasoline as defined in § 80.81(a)(2).

(c) Gasoline that is exported for sale outside the U.S.

§ 80.205 How is compliance with the annual average sulfur level determined?

(a) The refinery or importer average gasoline sulfur level is calculated as follows:

$$S_a = \frac{\sum_{i=1}^n (V_i \times S_i)}{\sum_{i=1}^n V_i}$$

Where:

S_a = The refinery or importer annual average sulfur value.

V_i = The volume of gasoline produced or imported in batch i .

S_i = The sulfur content of batch i as determined in accordance with the requirements of § 80.330.

n = The number of batches of gasoline produced or imported during the averaging period.

i = Individual batch of gasoline produced or imported during the averaging period.

(b) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the sulfur content, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer must comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(c) Refiners and importers must exclude from compliance calculations all of the following:

(1) Gasoline that was not produced at the refinery or was not imported by the importer (or that was imported as Certified Sulfur-FRGAS).

(2) Blending stocks or gasoline that have been included in another refiner's compliance calculations.

(3) Gasoline exempted from standards under § 80.200.

(d) Compliance deficit. A refinery or importer may exceed the refinery or importer annual average sulfur standard specified in § 80.195 under the following conditions:

(1) In the calendar year following the year the standard is not met, the refinery or importer achieves compliance with the refinery or importer annual average sulfur standard specified in § 80.195; and

(2) In the calendar year following the year the standard is not met, and after achieving compliance with the refinery or importer annual average sulfur standard specified in § 80.195, the refinery or importer must have sufficient additional credits and/or actual reduction in sulfur levels to equal the compliance deficit of the previous year.

§ 80.210 What sulfur standards apply to gasoline downstream from refineries and importers?

(a) *Definition.* S-RGAS means gasoline produced by a domestic refinery that is subject to the standards in § 80.240, and to Certified Sulfur-FRGAS, as defined in § 80.410, except that no batch of gasoline may be classified as S-RGAS if the actual sulfur content is less than the national refinery cap standard specified in § 80.195.

(b) The sulfur cap standard for gasoline at any point in the gasoline distribution system downstream from refineries and import facilities, including gasoline at facilities of distributors, carriers, retailers and wholesale purchaser-consumers, is as follows:

(1) The following standards apply to gasoline except where product transfer documents indicate the presence of any S-RGAS:

During the Period	National Downstream Sulfur Cap Standard (ppm)
February 1, 2004, through January 31, 2005	≤326
February 1, 2005, through January 31, 2006	≤201
February 1, 2006, and thereafter	≤95

(2) For gasoline, including a mixture of gasoline batches from different refineries, where product transfer documents indicate the presence of any S-RGAS, the downstream cap standard for the gasoline is the highest downstream cap standard applicable to any gasoline in the mixture, except that if a test result indicates the sulfur content of the mixture is less than or equal to the applicable national downstream cap standard, the gasoline is subject to the national downstream cap standard.

§ 80.215 What requirements apply to oxygenate blenders?

Oxygenate blenders, as defined by § 80.2(mm), are subject to the requirements of this subpart except for the reporting requirements of § 80.370 and the requirements under § 80.330 to sample and test each batch of gasoline produced.

§ 80.220 [Reserved]

Small Refiner Provisions

§ 80.225 What is the definition of a small refiner?

(a) A *small refiner* is defined as any person, as defined by 42 U.S.C. 7602(e), which, as of January 1, 1999:

(1) Produced gasoline at a refinery by processing crude oil through refinery processing units; and

(2)(i) Employed no more than 1500 people, including subsidiaries, and in the case of a refiner who operates a refinery as a joint venture with other refiners, including the total number of employees of all corporate entities in the venture; or

(ii) Is a subsidiary, in which case the employees of the parent company and any wholly-owned subsidiaries of the parent company must be included in determining if the 1,500 employee limit is exceeded.

(b) This definition applies to domestic and foreign refiners.

(c) If, without merger with or acquisition of another business unit, a company with approved small refiner status exceeds 1500 employees after January 1, 1999, it will be considered a small refiner for the duration of the small refiner program.

(d) A refiner that was not in operation as of January 1, 1999, that begins operation before January 1, 2001, and meets all other criteria of this subpart, may apply for small refiner status according to § 80.235.

§ 80.230 Who is not eligible for the small refiner provisions?

(a) The following are not eligible for the small refiner provisions:

(1) Refineries built or started up after January 1, 1999, unless the criteria of § 80.225(d) are met; or

(2) Persons that employ more than 1500 people on January 1, 1999, but employ fewer than 1500 people after that date; or

(3) Importers; or

(4) Refiners employing 1500 or fewer people which were part of a larger corporation as of January 1, 1999 but subsequently were sold to form a new company.

(b) *Disqualification as a small refiner.*

(1) Refiners who qualify as small under § 80.225, and subsequently employ more than 1500 people as a result of merger with or acquisition of another entity, are disqualified as small refiners and must meet the standards in § 80.195 beginning on January 1 of the first calendar year following such merger or acquisition.

(2) If a small refiner is no longer eligible for small refiner status or elects to change the status of any refinery operating under a small refiner individual refinery standard to subject the refinery to the standards in § 80.195, the refiner must notify EPA in writing within 20 days of the disqualifying event or, in the case of a voluntary election, no later than November 15

prior to the year that the change will occur. Each refinery of the small refiner no longer eligible for small refiner status must meet the standards in § 80.195 for the next averaging period.

§ 80.235 How does a refiner obtain approval as a small refiner?

(a) A refiner must apply to EPA for small refiner status by June 1, 2002.

(b) Applications for small refiner status must be sent to: U.S. EPA—FED, Gasoline Sulfur Small Refiner Status, 2000 Traverwood, Ann Arbor, MI 48105.

(c) The small refiner status application must contain the following information:

(1) A listing of the name and address of each location where any employee of the refiner worked on January 1, 1999, the total number of employees at each location, and the type of business activities carried out at each location.

(2) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

(3) Name, address, phone number, facsimile number and E-mail address of a corporate contact person.

(d) For joint ventures, the total employee count includes the combined employee count of all corporate entities in the venture.

(e) For government-owned refiners, the total employee count includes all government employees.

(f) Refiners who apply for small refiner status based on the number of employees after January 1, 1999 but before January 1, 2001, as permitted under § 80.225(d), must comply with paragraphs (a) through (c) of this section.

(g) EPA will notify a refiner of approval or disapproval of small refiner status by letter.

(1) If approved, EPA will notify the refiner of each refinery's approved baseline, refinery per-gallon cap, and downstream per-gallon cap standard under § 80.210.

(2) If disapproved, the refiner must comply with the standards in § 80.195.

§ 80.240 What are the small refiner gasoline sulfur standards?

(a) The gasoline sulfur standards for an approved small refiner depend on the refinery baseline sulfur level, and are shown in Table 1 of this section, as follows:

TABLE 1.—GASOLINE SULFUR STANDARDS FOR APPROVED SMALL REFINERS

Refinery baseline sulfur level (ppm)	Refinery annual average and per-gallon ("cap") sulfur standards (ppm) that apply during 2004–2007
0 to 30	Refinery average: 30. Cap: 80.
31 to 80	Refinery average: no requirement. Cap: 80.
81 to 200	Refinery average: baseline level. Cap: Factor of 2 above the baseline.
201 and above.	Refinery average: 200 ppm or 50% of baseline, whichever is higher, but in no event greater than 300 ppm. Cap: Factor of 1.5 above baseline level.

(b) The average standards specified in Table 1 of this section apply to the combined reformulated and conventional gasoline produced at a refinery.

(c) The refinery average sulfur standards specified in Table 1 of this section must be met on an annual calendar year basis for each refinery owned by a small refiner.

(d) The per-gallon cap standards specified in Table 1 of this section for the averaging period beginning January 1, 2004 must be met beginning October 1, 2003.

(e) *Volume limitation.* (1) The refinery average standards specified in Table 1 of this section apply to the volume of gasoline produced by a small refiner's refinery up to the lesser of:

(i) 105% of the baseline gasoline volume; or

(ii) The volume of gasoline produced at that refinery during the average period by processing crude oil.

(2) If a refiner exceeds the volume limitation in paragraph (e)(1) of this section during the calendar year, the annual average sulfur standard is calculated as follows:

$$S_{sr} = \frac{(V_b \times S_b) + (30 \times V_a \times V_b)}{V_a}$$

Where:

S_{sr} = Small refiner annual average sulfur standard.

V_b = Applicable volume under paragraph (e)(1) of this section.

V_a = Averaging period gasoline volume.

S_b = Small refiner sulfur baseline.

(3) The applicable volume from paragraph (e)(1) of this section excludes volumes of gasoline blending stocks used in the small refinery's gasoline

production that were received from external sources, unless such blending stocks are substantially transformed through the refinery's processing operations and have not been included in any other refiner's or importer's compliance determination.

(4) The applicable per-gallon cap standards in Table 1 of this section apply to all gasoline produced by small refiners.

(f) Withdrawal of small refiner status. Refiners that receive notification from EPA under § 80.235(f) of their qualification as small refiners will have that status withdrawn if EPA finds that the refiner provided false or inaccurate information on its application for small refiner status. Such refiners will be subject to the standards in § 80.195 beginning on January 1, 2004.

§ 80.245 How does a small refiner apply for a sulfur baseline?

(a) A refiner seeking small refiner status must establish an individual sulfur baseline for every refinery covered by the small refiner status application by June 1, 2002.

(1) If a sulfur baseline was submitted for the refinery under § 80.290, the refiner does not need to resubmit that information.

(2) If no sulfur baseline was previously submitted, the refiner must submit a sulfur baseline for every refinery according to § 80.250.

(b) The sulfur baselines must be submitted to the address specified in § 80.235(b).

§ 80.250 How is the small refiner sulfur baseline determined?

(a) The small refiner sulfur baseline is determined as follows:

$$S_b = \frac{\sum_{i=1}^n (V_i \times S_i)}{\sum_{i=1}^n V_i}$$

Where:

S_b = Sulfur baseline value.

V_i = Volume of gasoline batch i .

S_i = Sulfur content of batch i .

n = Total number of batches of conventional gasoline produced from January 1, 1997 through December 31, 1998.

i = Individual batch of conventional gasoline produced from January 1, 1997 through December 31, 1998.

(b) Foreign small refiners must also comply with the baseline establishment requirements in § 80.410(b).

(c) An approved small refiner may not aggregate the gasoline volumes and sulfur levels of its refineries for

compliance with the applicable standards specified in § 80.240.

(d) If at any time a small refinery baseline is determined to be incorrect, the corrected baseline applies ab initio and the annual average standards and cap standards are deemed to be those applicable under the corrected information.

(e) If a small refiner does not have the data specified in paragraph (a) of this section to generate a sulfur baseline, or if any refineries owned by that refiner were not operating in 1997–1998, EPA will assign each refinery a baseline average sulfur level of 150 ppm sulfur and a baseline CG volume equivalent to the annual gasoline volume capability of the refinery at the time it applies for small refiner status.

§ 80.255 [Reserved].

§ 80.260 What are the procedures and requirements for obtaining a hardship extension?

(a) An approved small refiner may apply to EPA for a hardship extension of the small refiner standards for calendar years 2008 and 2009. The application must be submitted no later than June 30, 2007 to U.S. EPA–FED, Small Refiner Hardship Extension, 2000 Traverwood, Ann Arbor, MI 48105.

(b) The application must provide a detailed discussion regarding the inability of the refinery to produce gasoline meeting the requirements of § 80.195. Such an application must include, at a minimum, the following information:

(1) A detailed analysis of the reasons the refinery is unable to produce gasoline meeting the requirements of § 80.195 in 2008, including costs, specification of equipment still needed, potential equipment suppliers, and efforts already completed to obtain the necessary equipment;

(2) If unavailability of equipment is part of the reason for the inability to comply, a discussion of other options considered, and the reasons these other options are not feasible;

(3) If relevant, a demonstration that a needed or lower cost technology is immediately unavailable, but will be available in the near future, and full information regarding when and from what sources it will be available;

(4) Schematic drawings of the refinery configuration as of January 1, 1997 and as of the date of the hardship extension application, and any planned future additions or changes;

(5) If relevant, a demonstration that a temporary unavailability exists of engineering or construction resources necessary for design or installation of the needed equipment;

(6) If sources of crude oil lower in sulfur than what the refiner is currently using are available, full information regarding the availability of these different crude sources, the sulfur content of those crude sources, the cost of the different crude sources over the past five years, and an estimate of gasoline sulfur levels achievable by your refinery if the lower sulfur crude sources were used;

(7) A discussion of any sulfur reductions that can be achieved from current levels;

(8) The date the refiner anticipates compliance with the standards in § 80.195 can be achieved at its refinery;

(9) An analysis of the economic impact of compliance on the refiner's business (including financial statements from the last 5 years, or for any time period up to 10 years, at EPA's request); and

(10) Any other information regarding other strategies considered, including strategies, or components of strategies, that do not involve installation of equipment, and why meeting the standards in § 80.195 beginning in 2008 is infeasible.

(c) The hardship extension application must contain a letter signed by the president, chief operating or chief executive officer, of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

§ 80.265 How will the EPA approve or disapprove of my hardship extension application?

(a) EPA will evaluate each application for hardship extension on a case-by-case basis. An extension will be granted for a refinery if the small refiner who owns the refinery adequately demonstrates that severe economic hardship would result if compliance with the standards in § 80.195 is required in 2008 and/or 2009.

(b) EPA may request more information, if necessary, for evaluation of the application. If requested information is not submitted within the time specified in EPA's request, or any extensions granted, the application may be denied.

(c) EPA will notify the refiner of approval or disapproval of hardship extension by letter.

(1) If approved, EPA will also notify the refiner of the date that full compliance with the standards specified at § 80.195 must be achieved or what interim sulfur levels or schedules apply, if any.

(2) If disapproved, beginning January 1, 2008, the refinery is subject to the requirements in § 80.195.

§ 80.270–80.275 [Reserved]

**Sulfur Averaging, Banking, Trading-
General Information**

§ 80.280 What is the sulfur Averaging, Banking and Trading (ABT) program?

(a) The sulfur averaging, banking and trading program is a voluntary program

which allows eligible, participating refiners and importers to generate, bank, trade and use credits.

(b) Beginning in 2000, refiners and importers may generate credits by producing or importing gasoline with sulfur levels below the applicable baseline as calculated under § 80.295.

(c) Beginning in 2004, sulfur credits may be:

(1) Used by the refiner or importer who generated the credits;

(2) Banked for later use or transfer; or
(3) Traded or sold to another refiner or importer.

(d) This subpart contains specific requirements for the following:

(1) Using, generating, selling and trading credits; and

(2) The duration of the ABT program.

(e) The gasoline sulfur ABT program is summarized in Table 1 of this section as follows:

BILLING CODE 6560–50–P

Table 1. Sulfur ABT Program Summary

2000	2000 - 2003	2004	2005	2006	2007+
Application for Credit Program Baseline due by July 1	Early Credit Generation for Gasoline with ≤ 150 ppm Sulfur				
		Credit Generation for ≤ 30 ppm Sulfur			
	Banking and Trading of Credits	Banking & Trading of Credits			
		Corporate Average			
		Standards Apply			
		Compliance with 30 ppm Average Standard at the Refinery and Importer Level			
		Phase-in of Downstream Cap Standards			

BILLING CODE 6560–50–C

§ 80.285 Who may participate in the sulfur ABT program?

(a) Any refiner or importer of gasoline, may participate in the program, except that participation by small refiners is limited under paragraph (d) of this section.

(b) Refiners and importers who choose to generate credits in the ABT program must establish a sulfur baseline under § 80.290.

(c) Oxygenate blenders may not participate in the program.

(d) Small refiners with any refinery subject to the standards specified in § 80.240:

(1) May not use sulfur credits to meet the average standard applicable to the refinery.

(2) May generate early credits under § 80.305 and bank and trade such sulfur credits throughout the duration of the sulfur ABT program.

Sulfur ABT Program—Baseline

§ 80.290 How do I apply for a sulfur baseline?

(a) Each refiner or importer who wishes to generate ABT program credits during 2000–2003 must submit a sulfur baseline notification to EPA by July 1, 2000.

(b) The sulfur baseline notification must be sent to: U.S. EPA–FED, ABT Sulfur Baseline, 2000 Traverwood, Ann Arbor, MI 48105.

(c) The sulfur baseline notification must include the following information:

(1) A listing of the names and addresses of all refineries and/or import facilities owned by the corporation;

(2) The conventional gasoline sulfur baseline value, calculated as specified in § 80.295(a), for each refinery and import facility of the corporation.

(3) The conventional gasoline baseline volume, calculated as specified in

§ 80.295(c), for each refinery and import facility of the corporation.

(4) A letter signed by the president, chief operating or chief executive officer, of the company, or his/her delegate, stating that the information contained in the sulfur baseline determination is true to the best of his/her knowledge.

(5) Name, address, phone number, facsimile number and E-mail address of a corporate contact person.

(d)(1) A refiner or importer may generate credits as specified in § 80.305, beginning in calendar year 2000, based on the sulfur baseline submitted to EPA according to paragraph (c) of this section.

(2) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, the corrected baseline applies. Credits

generated, banked, used or traded will be adjusted to reflect the correction.

§ 80.295 How is a refinery or importer sulfur baseline determined?

(a) A refinery's or importer's conventional gasoline sulfur baseline is calculated using the following equation:

$$S_{BCG} = \frac{\sum_{i=1}^n (V_i \times S_i)}{\sum_{i=1}^n V_i}$$

Where:

S_{BCG} = Conventional gasoline sulfur baseline value.

V_i = Volume of conventional gasoline batch i .

S_i = Sulfur content of conventional gasoline batch i .

n = Total number of batches of conventional gasoline produced or imported during January 1, 1997 through December 31, 1998.

i = Individual batch of conventional gasoline produced or imported during January 1, 1997 through December 31, 1998.

(b) The individual sulfur baseline for summer reformulated gasoline is 150 ppm.

(c) The individual sulfur baseline for winter reformulated gasoline is equivalent to the conventional gasoline sulfur baseline calculated under paragraph (a) of this section.

(d) The baseline volumes are as follows:

(1) The conventional gasoline baseline volume is one half of the total 1997 and 1998 volume of conventional gasoline produced or imported.

(2) There is no baseline volume for either summer or winter RFG produced or imported.

(e) Any refiner or importer who, under § 80.65 or § 80.101(d)(4), included oxygenate blended downstream in conventional gasoline compliance calculations for 1997–1998 must include this oxygenate in the baseline calculations for sulfur content and volume under paragraphs (a) and (d) of this section.

(f) The baseline calculations for sulfur content and volume under paragraphs (a) and (d) of this section for non-oxygenated blendstock, such as natural gasoline or butane, that is blended into gasoline must be calculated using the sulfur content and volume of the blendstock only.

§ 80.300 What if I did not produce or import gasoline during 1997 or 1998?

A refiner or importer who did not produce or import gasoline during 1997

or 1998 is assigned a baseline sulfur level of 150 ppm for conventional gasoline and RFG (winter and summer).

Sulfur ABT Program—Credit Generation

§ 80.305 How are credits generated during the time period 2000 through 2003?

(a) *General.* (1) Sulfur credits may be generated annually during calendar years 2000–2003.

(2) Credits must be calculated separately for Conventional gasoline and RFG. Credits must be calculated by multiplying the volume of gasoline for which credits are generated under paragraphs (b) and (c) of this section by the amount of sulfur reduction in ppm below the refiner's or importer's applicable sulfur baseline. The refiner or importer may include any oxygenates included in its RFG or Conventional gasoline volume under §§ 80.65 and 80.101(d)(4), respectively, for the purpose of generating credits.

(3) A refiner's or importer's total credit generation is the sum of the separate credit calculations for Conventional gasoline and RFG.

(4) Credits under this program are in units of "ppm-gallons".

(5) Credits must be identified by the year of creation, the year of transfer (if any), and the year of use (as specified in § 80.315). Records relating to credit generation, use, and transfer, including the applicable years, must be maintained pursuant to § 80.365.

(b) *Calculation of credits for conventional gasoline.* (1) Refiners and importers may generate credits for conventional gasoline produced or imported during an averaging period only if the annual average sulfur level for the conventional gasoline produced during the averaging period is less than 150 ppm.

(2) Refiners and importers whose conventional gasoline volume for the averaging period is less than or equal to 105% of its baseline volume for conventional gasoline, must calculate credits as follows:

$$CR_{CG} = (V_{CG}) \times (S_{BCG} - S_{ACG})$$

Where:

CR_{CG} = Credits generated for conventional gasoline.

V_{CG} = Volume of conventional gasoline produced or imported during the averaging period.

S_{BCG} = Sulfur baseline value for conventional gasoline or 150, whichever is greater.

S_{ACG} = Annual average sulfur level for conventional gasoline produced or imported during the averaging period.

(3) Refiners and importers whose conventional gasoline volume for the averaging period is greater than 105% of the baseline volume for conventional gasoline, must calculate credits as follows:

$$CR_{CG} = (V_{BCG} \times 1.05) \times (S_{BCG} - S_{ACG}) + (V_{CG} - (1.05 \times V_{BCG})) \times (150 - S_{ACG})$$

Where:

CR_{CG} = Credits generated for conventional gasoline.

V_{BCG} = Baseline volume of conventional gasoline.

S_{BCG} = Sulfur baseline value for conventional gasoline or 150, whichever is greater.

S_{ACG} = Annual average sulfur level for conventional gasoline produced or imported during the averaging period.

V_{CG} = Volume of conventional gasoline produced or imported during the averaging period.

(c) *Calculation of credits for RFG.* (1) Refiners and importers may generate credits for summer RFG produced or imported during an averaging period only if the average sulfur level for the summer RFG produced or imported during the averaging period is less than 150 ppm. Summer RFG credits are calculated as follows:

$$CR_{SRFG} = (V_{SRFG}) \times (150 - S_{SRFG})$$

Where:

CR_{SRFG} = Credits generated for summer reformulated gasoline.

V_{SRFG} = Volume of summer RFG produced or imported during the averaging period.

S_{SRFG} = Average sulfur level for summer RFG produced or imported during the averaging period.

(2) Refiners and importers may generate credits for winter RFG produced or imported during an averaging period only if the average sulfur level for the winter RFG produced or imported during the averaging period is less than 150 ppm. Winter RFG credits calculated as follows:

$$CR_{WRFG} = (V_{WRFG}) \times (S_{BCG} - S_{WRFG})$$

Where:

CR_{WRFG} = Credits generated for winter reformulated gasoline.

V_{WRFG} = Volume of winter RFG produced or imported during the averaging period.

S_{BCG} = Sulfur baseline value for conventional gasoline or 150, whichever is greater.

S_{WRFG} = Average sulfur level for winter RFG produced or imported during the averaging period.

§ 80.310 How are credits generated beginning in 2004?

(a) A refiner, for any refinery owned by it, or an importer may generate credits for annual average sulfur reductions if the annual average sulfur level for the combined RFG and conventional gasoline produced by any refinery owned by the refiner or imported by the importer for the averaging period is less than 30 ppm.

(b) Credits calculated as follows:

$$CR_A = (V_A) \times (30 - S_A)$$

Where:

CR_A = Credits generated for the averaging period.

V_A = Total annual combined volume of RFG and conventional gasoline produced in a refinery or imported during the averaging period.

S_A = Annual average sulfur level of RFG and conventional gasoline produced in a refinery or imported during the averaging period.

(c) Credits must be identified by the year of creation, the year of transfer (if any), and the year of use (as specified in § 80.315). Records relating to credit generation, use, and transfer, including the applicable years, must be maintained pursuant to § 80.365.

Sulfur ABT Program-Credit Use**§ 80.315 How are credits used?**

(a) Credits may be used, beginning with the 2004 averaging period, to meet the applicable annual average sulfur standard of 30 ppm, provided that:

(1) Sulfur credits used were generated pursuant to the requirements of this subpart; and

(2) The requirements of paragraphs (b) and (e) of this section are met.

(b) Credits may not be used to meet the applicable corporate pool average under § 80.195.

(c) *Credit transfers.* (1) Credits obtained from other persons may be used to meet the annual averaged 30 ppm standard specified in § 80.195 if all the following conditions are met:

(i) The credits are generated and reported according to the requirements of this subpart.

(ii) The credits are used in compliance with the limitations regarding the appropriate periods for credit use in this subpart.

(iii) Any credit transfer takes place no later than the last day of February following the calendar year averaging period when the credits are used.

(iv) Only the refiner or importer who generates the credits transfers them, and only a refiner or importer who uses the credits to achieve its compliance with the averaged standards obtains them from the transferor refiner or importer.

(v) The credit transferor must apply any credits necessary to meet the transferor's applicable average standard, including credits generated during 2000, 2001, 2002 and 2003, before transferring credits to any other refiner or importer. No credits may be transferred that would result in the transferor having a negative credit balance.

(vi) The transferor must supply to the transferee records indicating the year(s) the credits were generated.

(2) In the case of credits that have been calculated or created improperly, or are otherwise determined to be invalid in violation of the requirements of this subpart, the following provisions apply:

(i) Invalid credits cannot be used to achieve compliance with the transferee's averaging standard, regardless of the transferee's good faith belief that the credits were valid.

(ii) The refiner or importer who used the credits, and any transferor of the credits, must adjust its sulfur calculations to reflect the proper credits.

(iii) Any properly created credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies credits as needed to meet the average standard at the end of the compliance year, must first be applied to correct the invalid transfers before the transferor trades or banks the credits.

(d) *Limitations on credit use.* (1) Credits generated prior to 2004 must be used or transferred no later than 2007.

(2) Credits generated in 2004 or later must be used or transferred within five years of generation.

(3) Credits transferred must be used by the transferee within five years of transfer, or no more than ten years of the year of generation, whichever is less.

(4) A refiner possessing credits must use all credits prior to falling into compliance deficit, as defined under § 80.205(d) (2).

(e) If the recordkeeping requirements of § 80.365(d) are not met, credits used under this subpart are invalid.

§ 80.320 What are the reporting requirements for the sulfur ABT program?

(a) A refiner or importer who generates, uses, or transfers credits under the sulfur ABT program must file an annual report with EPA which must be submitted with the refiner's or importer's annual compliance report under § 80.370.

(b) The report must include the following information:

(1) For credits generated in 2000, 2001, 2002 and 2003, the applicable Conventional gasoline sulfur content baseline, in ppm, and Conventional gasoline baseline;

(2) The actual annual average sulfur content, in ppm, before the application of credits, separately for Conventional gasoline and separately, the average sulfur content, in ppm, for winter RFG and for summer RFG;

(3) For refiners, the annual volume of conventional gasoline produced, and for importers, the annual volume of Non-Certified S-FRGAS imported, in gallons;

(4) The number of credits used in ppm-gallons, in the averaging period;

(5) The number of credits banked, credits transferred and credits acquired, in ppm-gallons;

(6) The identity of the refiners and importers involved in these transactions, including their registration numbers, under § 80.190, and the number of credits in ppm-gallons in each transaction; and

(7) The number of credits, if any, for which the refiner is deficient, as defined under § 80.205 (d), and the use of credits in the following year to cure the deficiency under § 80.205(d)(2).

§ 80.325 [Reserved].**Sampling, Testing and Retention Requirements for Refiners and Importers****§ 80.330 What are the sampling and testing requirements for refiners and importers?**

(a) *Sample and test each batch of gasoline.* (1) Refiners and importers of gasoline must collect a representative sample from each batch of gasoline produced or imported and test each sample to determine its sulfur content for compliance with requirements under this subpart prior to the gasoline leaving the refinery or import facility, using the sampling and testing methods provided in this section.

(2) The requirements of this section apply beginning October 1, 2003, or January 1 of the first year of credit generation for refiners and importers generating early credits under § 80.305.

(b) *Sampling methods.* Refiners and importers must sample each batch of gasoline by using one of the following methods:

(1) Manual sampling of tanks and pipelines must be performed according to the applicable procedures specified in one of the two following methods:

(i) American Society for Testing and Materials (ASTM) method D 4057-95, entitled "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(ii) Samples collected under the applicable procedures in ASTM D 5842-95, entitled "Standard Practice for Sampling and Handling of Fuels for Volatility Measurement," may be used

for measuring sulfur content if you assure that there is no contamination present that could affect the sulfur test result.

(2) Automatic sampling of petroleum products in pipelines must be performed according to the applicable procedures specified in ASTM method D 4177-95, entitled "Standard Practice for Automatic Sampling of Petroleum and Petroleum Products."

(c) *Test method for measuring the sulfur content of gasoline.* Refiners and importers must use the method provided in § 80.46(a) to measure the sulfur content of gasoline they produce or import.

(d) *Test method for sulfur in Butane.* The sulfur content of butane must be determined by ASTM D-5623-94, entitled "Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection."

(e) *Incorporations by reference.* ASTM standard practices D 4057-95, D 4177-95 and D 5842-95, and ASTM standard method D 5623-94 are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE-131), room M-1500, U.S. Environmental Protection Agency, Docket No. A-97-03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 80.335 What gasoline sample retention requirements apply to refiners and importers?

(a) For each batch of gasoline produced or imported, refiners and importers must:

(1) Retain a representative sample of at least 330 ml, collected from the batch and keep the sample for a period not less than 30 days from the date the batch was collected.

(2) Comply with the gasoline sample handling and storage procedures found in the sampling procedures specified in § 80.330 for each sample retained.

(3) Provide the sample retained under paragraph (a) of this section to the Administrator's authorized representative upon request by EPA, and if requested by EPA, ship the sample to EPA within two working days by an overnight shipping service or comparable means, following the

procedures specified by EPA when the request is made.

(4) Include with each annual report filed under § 80.370, the following statement, signed and dated by the same person who signs the annual report:

I certify that I have made inquiries that are sufficient to give me knowledge of the procedures to collect and store gasoline samples, and I further certify that the procedures meet the requirements of the ASTM procedures required under § 80.330.

(b) The requirements of this section apply beginning October 1, 2003, or January 1 of the first year of credit generation for refiners and importers generating early credits under § 80.305.

§ 80.340 What alternative standards, sampling and testing requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

(a) Any refiner who produces gasoline by blending blendstock into PCG must meet the requirement of § 80.330 to sample and test every batch of gasoline as follows:

(1)(i) Sample and test to determine the volume and sulfur content of the PCG prior to blendstock blending;

(ii) Sample and test to determine the volume and sulfur content of the gasoline subsequent to blendstock blending;

(iii) Calculate the volume and sulfur content of the blendstock, which is a batch for purposes of compliance calculations and reporting, by subtracting the volume and sulfur content of the PCG from the volume and sulfur content of the gasoline subsequent to blendstock blending.

(2) In the alternative, and provided every batch of blendstock used at a refinery during an averaging period has a sulfur content that is equal to or less than the applicable per-gallon cap standard under § 80.195, a refiner may sample and test each batch of blendstock when received at the refinery to determine the volume and sulfur content, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average sulfur standard and for reporting.

(b) Refiners that blend only butane into PCG may meet the sampling and testing requirements by using sulfur test results of the butane supplier, provided that the following requirements are also met:

(1) The sulfur content of the butane received from the butane supplier must not exceed 30 ppm on a per-gallon basis.

(2) The butane supplier must demonstrate that the sulfur content of

each load of butane supplied does not exceed the per-gallon sulfur standard of 30 ppm through test results of samples of the butane contained in the storage tank from which the butane blender is supplied.

(i) Testing for the sulfur content of the butane by the supplier must be subsequent to each time butane is supplied to the supplier's storage tank, or the testing must be immediately before transfer of butane to the butane blender.

(ii) The testing must be performed by the method specified in § 80.330(d).

(iii) The butane blender must obtain a copy of the butane supplier's test results, at the time of each transfer of butane to the butane blender, that reflect the sulfur content of each load of butane supplied to the butane blender.

(3) The sulfur content and volume of each batch of gasoline produced must be that of the butane the refiner blends into gasoline for purposes of calculating compliance with the standards in § 80.195.

(4) The refiner must conduct a quality assurance program of sampling and testing for each butane supplier that demonstrates the butane sulfur content does not exceed 30 ppm. The frequency of butane sampling and testing, for each butane supplier, must be one sample for every 500,000 gallons of butane received, or one sample every 3 months, whichever results in more frequent sampling.

(5) If any of the requirements of this section are not met, in whole or in part, for any butane blended into gasoline, that butane is deemed in violation of the gasoline sulfur standards in § 80.195.

§ 80.345 [Reserved]

§ 80.350 What alternative sulfur standards, sampling and testing requirements apply to importers who transport gasoline by truck?

Importers who import gasoline into the United States by truck, as an alternative to the requirements to sample and test every batch of gasoline under § 80.330(a), and the annual sulfur average and per-gallon cap standards otherwise applicable to importers under § 80.195, may instead comply with the following requirements:

(a) *Per-gallon standard.* The imported gasoline must meet a sulfur standard of 30 ppm on a per-gallon basis.

(b) *Terminal testing.* The terminal operator must demonstrate the gasoline does not exceed 30 ppm sulfur on a per-gallon basis, through testing of the gasoline contained in the storage tank from which the trucks used to transport gasoline into the United States are loaded.

(1) This sampling and testing must be performed after each receipt of gasoline into the storage tank, or immediately before each transfer of gasoline to the importer's truck.

(2) The sampling and testing must be performed using the methods specified in § 80.330.

(3) At the time of each transfer of gasoline to the importer's truck, the importer must obtain a copy of the terminal test result that indicates the sulfur content of each truck load of gasoline that is imported into the United States.

(c) *Quality assurance program.* The importer must conduct a quality assurance program, as specified in this paragraph, for each truck loading terminal.

(1) Quality assurance samples must be obtained from the truck-loading terminal and tested by the importer, or by an independent laboratory, and the terminal operator must not know in advance when samples are to be collected.

(2) The sampling and testing must be performed using the methods specified in § 80.330.

(3) The quality assurance test results for sulfur must be within 12 ppm of the terminal's test results.

(4) The frequency of the quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(d) Instead of conducting the quality assurance program specified in paragraph (c) of this section an importer may meet the quality assurance program requirement if the sampling and testing requirements of paragraph (b) of this section are conducted by an independent laboratory that meets the requirements in § 80.65(f)(2)(iii).

(e) The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers and maintaining records under § 80.365, and reporting under § 80.370.

(f) EPA inspectors or auditors, and auditors conducting attest engagements under § 80.415, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and must be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(g) This section does not apply to Certified Sulfur-FRGAS.

(h) If any of the requirements of this section are not met, all gasoline

imported by the truck importer during the time any requirements are not met is deemed in violation of the gasoline sulfur average and per-gallon cap standards in § 80.195. In addition, the truck importer may not in the future use the sampling and testing provisions in this section in lieu of the provisions in § 80.330.

§ 80.355 [Reserved]

Recordkeeping and Reporting Requirements

§ 80.360 What are the product transfer document requirements?

(a) On each occasion that any person transfers custody of or title to S-RGAS, as defined in § 80.210, other than when S-RGAS is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the product transfer documents must include a statement identifying the gasoline as S-RGAS and the applicable downstream cap under § 80.210(b).

(b) Except for transfers to truck carriers, retailers and wholesale purchaser-consumers, product codes may be used to convey the information required by this section if such codes are clearly understood by each transferee.

§ 80.365 What records must be kept?

(a) *Records that must be kept.* Beginning January 1, 2004, any person who sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports gasoline, must keep the following records:

(1) The product transfer documents required under §§ 80.106, 80.77 and 80.360;

(2) For any sampling and testing for sulfur content conducted:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the testing;

(iii) The results of the tests for sulfur content and the test volume; and

(3) Reasonable business records documenting the actions you took to stop the sale or distribution of any gasoline found not to be in compliance with the sulfur standards specified in this subpart, and the actions you took to identify the cause of any noncompliance and prevent future instances of noncompliance.

(b) *Additional records that refiners and importers must keep.* Beginning October 1, 2003, or January 1 of the first year of early credit generation for refiners and importers generating credits under § 80.305, refiners and importers

must keep records that include the following information:

(1) The volume of each batch of gasoline produced or imported;

(2) For credit generation, the information required by paragraph (a)(2) of this section as well as the information required under § 80.305(a)(5) and § 80.310(c);

(3) The batch number assigned to each batch of gasoline under § 80.65(d)(3); however, if composite samples that represent multiple batches of conventional gasoline for anti-dumping purposes are used, a separate batch number must be assigned to each batch for purposes of this subpart;

(4) The date of production or importation of each batch of gasoline produced or imported;

(5) The calculations and records used in making the calculations to determine compliance with the applicable sulfur standard on average, including compliance with the debit provision of this subpart and records regarding the generation, use, transfer, and banking of credits under §§ 80.195, 80.305, 80.310 and 80.315; and

(6) A copy of all reports and other documents submitted to the EPA pursuant to the requirements of this subpart.

(c) *Additional records importers must keep.* Importers must maintain documentation which verifies the source of each batch of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported.

(d) *Length of time records must be kept.* The records required in paragraphs (a), (b) and (c) of this section must be maintained for five years from the date they were created, except for the following:

(1) For any person who generates credits, and/or uses the credits so generated, the records required by paragraphs (a), (b) and (c) of this section must be retained for five years from the date the credits were used, and in no case must the records be retained for more than ten years from the year they were generated.

(2) In the case of credits that were transferred between two parties, both parties must retain records of those credits for ten years from the date the credits were generated.

(e) *Make records available to EPA.* The records required in paragraphs (a), (b) and (c) of this section must be made available to the Administrator or the Administrator's authorized representative upon request.

§ 80.370 What are the annual reporting requirements?

Beginning with the 2004 averaging period, or the first year of credit

generation for refiners and importers generating early credits under § 80.305, and continuing for each averaging period thereafter, refiners and importers must submit to the Administrator a report that contains the information required in this section and such other information as EPA may require. A refiner's annual reports for 2004 and 2005 must include the refiner's RFG and conventional gasoline production for all refineries during the averaging period. Beginning in 2006 and thereafter, a refiner must submit a separate annual report for each refinery that produced gasoline during the averaging period. An importer must submit a report for all of the gasoline imported during the averaging period no later than the last day of February following the previous year's averaging period.

(a) *Information required in a refiner's report.* For refiners, the annual sulfur averaging report must include the following information:

(1) The EPA refiner and refinery facility registration numbers;

(2) The total gallons of gasoline (winter reformulated, summer reformulated, and conventional) produced at the refinery or aggregation of refineries;

(3) The annual average sulfur content of the gasoline (winter reformulated, summer reformulated, and conventional) produced at the refinery, or aggregation of refineries, in parts per million;

(4) For each batch of gasoline produced during the averaging period:

(i) The batch number assigned under § 80.65(d)(3); however, if composite samples that represent multiple batches of conventional gasoline are tested for conventional gasoline, a separate batch number must be assigned to each batch, using the batch numbering procedures specified in § 80.65(d)(3);

(ii) The date the batch was produced;

(iii) The volume of the batch;

(iv) The sulfur content of the batch as determined under § 80.330;

(v) The information on individual batches submitted to EPA under § 80.75(a)(2) and 80.105(a)(5) satisfies the requirements of this paragraph (a)(4) unless compositing of samples is used for anti-dumping rule batch reporting under § 80.105(a)(5);

(5) A refiner's annual report for 2004 and 2005 must include the refiner's winter reformulated RFG, summer RFG, and conventional gasoline for all refineries during the averaging period;

(6) Beginning in 2006 and thereafter, a refiner must submit a separate annual report for each of its refineries that produced gasoline during the averaging period.

(b) *Information required in an importer's report.* An importer must submit a report for all the gasoline it imported during the averaging period. The report must include the following information:

(1) The EPA importer registration number;

(2) The total gallons of gasoline (reformulated and conventional) imported during the averaging period, excluding certified Sulfur-FRGAS;

(3) The annual average sulfur content of the gasoline (reformulated and conventional) imported during the averaging period, excluding certified Sulfur-FRGAS, in parts per million;

(4) For gasoline imported during the averaging period from any small foreign refiner who has an EPA approved individual baseline under the small refiner provisions at § 80.410, include the following information:

(i) The EPA refiner and refinery registration numbers of each such small foreign refiner and refinery facility; and

(ii) The total gallons of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported from each such small foreign refiner;

(5) The batch information required in paragraph (a)(4) of this section.

(c) *Sulfur credit program activity.*

Refiners and importers who generate, bank, transfer, or use sulfur credits must submit to EPA an annual report in accordance with the provisions of § 80.320.

(d) The report must state the debit for the current year, as applicable, and credits applied to the previous compliance year's debit, as applicable.

(e) *Report submission.* Each annual report required under this section must be:

(1) Signed and certified as meeting all of the applicable requirements of this subpart H by the owner or a responsible corporate officer of the refiner or importer; and

(2) Submitted to EPA no later than the last day of February for the prior calendar year averaging period.

(f) *Attest reports.* Attest reports for refiner and importer attest engagements must be submitted to the Administrator by May 30 of each year under § 80.415.

Exemptions

§ 80.375 What requirements apply to California gasoline?

(a) *Definition.* For purposes of this subpart, *California gasoline* is defined under § 80.81(a)(2).

(b) *California gasoline exemptions.* California gasoline is exempt from all requirements of this subpart with the exception of the segregation

requirement described in paragraph (c) of this section and the product transfer document requirements described in paragraph (d) of this section.

(c) *Segregation requirement.*

California gasoline produced at a refinery located outside of the state of California must be kept segregated from all gasoline that is not California gasoline at all points in the distribution system.

(d) *Product transfer documents.* For California gasoline produced at a refinery located outside the state of California, the transferors and transferees must comply with the product transfer document requirements in § 80.81(g).

(e) *Use of California test methods and off site sampling procedures.* Any refiner of gasoline produced in California or importer of gasoline imported into California whose gasoline is used outside of California may:

(1) Use the sampling and testing methods approved in Title 13 of the California Code of Regulations, as permitted under § 80.81(h)(1) as an alternative to the sampling and testing methods required by § 80.330; and

(2) Determine the sulfur content of gasoline at off site tankage as permitted in § 80.81(h)(2).

§ 80.380 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

(a) *R&D application.* Any person may request an exemption from the provisions of this subpart for gasoline used for research, development or testing ("R&D") purposes by submitting an application that includes all the information listed in paragraph (c) of this section to:

Director (6406J), Fuels and Energy Division, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; and Director (2242A), Air Enforcement Division, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(b) *Criteria for an R&D exemption.* For an R&D exemption to be granted, the proposed test program must:

(1) Have a purpose that constitutes an appropriate basis for exemption;

(2) Necessitate the granting of an exemption;

(3) Be reasonable in scope; and

(4) Have a degree of control consistent with the purpose of the program and EPA's monitoring requirements.

(c) *Information required to be submitted.* To demonstrate each of the four elements in paragraphs (b)(1) through (4) of this section, the

application required under paragraph (a) of this section must include the following information:

(1) A concise statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under § 80.385.

(3) To demonstrate the reasonableness of the scope of the program:

(i) An estimate of the program's duration;

(ii) An estimate of the maximum number of vehicles or engines involved in the program;

(iii) The time or mileage duration of the program;

(iv) The range of sulfur content of the gasoline expected to be used in the program, in ppm; and

(v) The quantity of gasoline which exceeds the applicable sulfur standard that is expected to be used in the program.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including at a minimum:

(i) The technical nature of the program;

(ii) The site(s) of the program (including street address, city, county, State, and zip code);

(iii) The manner in which information on vehicles and engines used in the program will be recorded and made available to the Administrator;

(iv) The manner in which results of the program will be recorded and made available to the Administrator;

(v) The manner in which information on the gasoline used in the program (including quantity, sulfur content, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to the Administrator;

(vi) The manner in which distribution pumps will be labeled to insure proper use of the gasoline;

(vii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained; and

(viii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in paragraphs (b)(4)(iii), (iv) and (v) of this section, and the location in which such information will be maintained.

(d) *Additional requirements.* (1) The product transfer documents associated with R&D gasoline must identify the gasoline as such, and must state that the gasoline is to be used only for research, development, or testing purposes.

(2) The R&D gasoline must be kept segregated from non-exempt gasoline at all points in distribution of the gasoline.

(3) The R&D gasoline must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a gasoline retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the gasoline.

(e) *Memorandum of exemption.* The Administrator will grant an R&D exemption upon a demonstration that the requirements of this section have been met. The R&D exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or delegate), which will include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section. Any violation of such a term or condition of the exemption or any requirement under this section will cause the exemption to be void *ab initio*.

Violation Provisions

§ 80.385 What acts are prohibited under the gasoline sulfur program?

No person may:

(a) Produce or import gasoline that does not comply with the applicable sulfur average standards at § 80.195 or § 80.240.

(b) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with the applicable sulfur cap standards at § 80.195, § 80.210 or § 80.240.

(c) Cause another person to commit an act in violation of paragraph (b) of this section.

(d) Cause gasoline that does not comply with an applicable refiner/importer or downstream cap standard under § 80.195, § 80.210 or § 80.240 to be in the gasoline distribution system.

§ 80.390 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the sulfur standards of this subpart must be determined based on the sulfur level of the gasoline, measured using the methodologies specified in § 80.330. Any evidence or information, including

the exclusive use of such evidence or information, may be used to establish the sulfur level of gasoline if the evidence or information is relevant to whether the sulfur level of gasoline would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in § 80.330, business records, and commercial documents.

(b) Determination of compliance with the requirements of this subpart other than the sulfur standards, and determination of liability for any violation of this subpart, are based on probative evidence or information obtained from any source or location. Such evidence may include, but is not limited to, business records and commercial documents.

§ 80.395 Who is liable for violations under the gasoline sulfur program?

(a) *Persons liable for violations of prohibited acts.* (1) Any refiner or importer who violates § 80.385(a) is liable for the violation.

(2) Any refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385(b) occurred, is deemed in violation of § 80.385(b).

(3) Any refiner, importer, distributor, reseller, retailer, or wholesale purchaser-consumer who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that is the subject of a violation of § 80.385(b), is deemed in violation of § 80.385(c).

(4) Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of § 80.385(b) occurred, is deemed in violation of § 80.385(b).

(5) Any carrier who dispensed, supplied, stored, or transported gasoline which is the subject of a violation of § 80.385(b), is deemed in violation of § 80.385(c) provided that EPA demonstrates, by reasonably specific showing by direct or circumstantial evidence, that any such carrier caused the violation.

(6) Any refiner, importer, distributor, reseller, or carrier who owned, leased, operated, controlled or supervised a facility from which gasoline that does

not comply with an applicable refiner/importer or downstream sulfur cap standard at § 80.195, § 80.210 or § 80.240 was released into the distribution system, is deemed in violation of § 80.385(d).

(7) Any person who caused another party to violate § 80.385(a), is liable for causing a violation of § 80.385(a).

(b) *Persons liable for failure to meet other requirements of this subpart.* (1) Any person who failed to meet a requirement of this subpart not addressed in paragraph (a) of this section is liable for a violation of that requirement.

(2) Any person who caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section is liable for causing a violation of that requirement.

§ 80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?

(a) Any person deemed liable for a violation of a prohibition under § 80.395(a), will not be deemed in violation if the person demonstrates:

(1) That the violation was not caused by the person or the person's employee or agent; and

(2) That the person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the gasoline in question, provided that the quality assurance program is carried out properly. Retailers and wholesale purchaser-consumers are not required to conduct quality assurance programs.

(b) In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required by paragraph (a) of this section, that the violation was caused by:

(1) An act in violation of law (other than the Clean Air Act or this Part 80), or an act of sabotage or vandalism;

(2) The action of any refiner, importer, retailer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation; or

(3) The action of any carrier or other distributor not subject to a contract with

the refiner or importer, but engaged for transportation of gasoline, despite specifications or inspections of procedures and equipment which are reasonably calculated to prevent such action.

(c) Under paragraph (a) of this section, for any person to show that the violation was not caused by it, or under paragraph (b) of this section, to show that the violation was caused by any of the specified actions, the person must demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person and that the person asserting the defense did not contribute to that other person's causation.

(d) *Quality assurance program.* To demonstrate an acceptable quality assurance program under paragraph (a)(2) of this section, a person must present evidence of the following:

(1) A periodic sampling and testing program to ensure the gasoline the person sold, dispensed, supplied, stored, or transported, meets the applicable sulfur standard;

(2) On each occasion when gasoline is found not in compliance with the applicable sulfur standard:

(i) The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting the non-complying product; and

(ii) The person promptly remedies the violation and the factors that caused the violation (for example, by removing the non-complying product from the distribution system until the applicable standard is achieved and taking steps to prevent future violations of a similar nature from occurring); and

(3) Any carrier who transports gasoline in a tank truck, the quality assurance program required under this paragraph (d) of this section is not required to include periodic sampling and testing of gasoline in the tank truck, but instead of such sampling and testing, the carrier must present evidence of an oversight program relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable sulfur standard and product transfer document requirements, and the periodic review of records received in the ordinary course of business concerning gasoline quality and delivery.

§ 80.405 What Penalties Am I Subject To?

(a) Any person liable for a violation under § 80.395, is subject to a civil penalty of not more than \$27,500 for

every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.395(a) for a violation of the applicable sulfur average standard or causing another party to violate that standard during any averaging period, is subject to a separate day of violation for each and every day in the averaging period. Any person liable under § 80.395(b) for a failure to fulfill any credit creation or transfer requirement, is subject to a separate day of violation for each and every day in the averaging period.

(c)(1) Any person liable under § 80.395(a) for causing gasoline that does not comply with an applicable refiner/importer or downstream sulfur cap standard to be in the gasoline distribution system in violation of § 80.385(d), is subject to a separate day of violation for each and every day that the non-complying gasoline remains any place in the gasoline distribution system.

(2) For purposes of paragraph (c) of this section, the length of time the gasoline in question remained in the gasoline distribution system is deemed to be twenty-five days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying gasoline remained in the gasoline distribution system for fewer than or more than twenty-five days.

(d) Any person liable under § 80.395(b) for failure to meet, or causing a failure to meet, a requirement of this subpart is liable for a separate day of violation for each and every day such requirement remains unfulfilled.

Provisions for Foreign Refiners With Individual Sulfur Baselines

§ 80.410 What are the additional requirements for gasoline produced at foreign refineries having individual small refiner sulfur baselines?

(a) *Definitions.* (1) A foreign refinery is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as "the United States").

(2) A foreign refiner is a person who meets the definition of refiner under § 80.2(i) for foreign refinery.

(3) A small foreign refiner is a refiner that meets the definition of a small refiner under § 80.225.

(4) "Sulfur-FRGAS" means gasoline produced at a foreign refinery that has been assigned an individual refinery

sulfur baseline and that is imported into the United States.

(5) "Non-Sulfur-FRGAS" means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery sulfur baseline, gasoline produced at a foreign refinery with an individual refinery sulfur baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual sulfur baseline during a year when the foreign refiner has opted to not participate in the Sulfur-FRGAS program under paragraph (c)(3) of this section.

(6) "Certified Sulfur-FRGAS" means Sulfur-FRGAS the foreign refiner intends to include in the foreign refinery's sulfur compliance calculations under § 80.205, and does include in these compliance calculations when reported to EPA.

(7) "Non-Certified Sulfur-FRGAS" means Sulfur-FRGAS that is not Certified Sulfur-FRGAS.

(b) *Baseline establishment.* Any foreign refiner that meets the definition of small under § 80.225, may submit to a petition to the Administrator for an individual refinery sulfur baseline, under § 80.235 by June 1, 2002.

(1) The baseline for a foreign refinery must reflect only the volume and properties of gasoline produced in 1997 and 1998 that was imported into the United States.

(2) In making determinations for foreign refinery baselines EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such a determination.

(3) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to cure this defect after a request for more information, then EPA will not assign an individual refinery sulfur baseline.

(c) *General requirements for foreign refiners with individual refinery sulfur baselines.* A foreign refiner of a refinery that has been assigned an individual sulfur baseline under paragraph (b) of this section must designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Sulfur-FRGAS, the foreign refiner must meet all requirements that apply to refiners under this subpart.

(2) In the case of Non-Certified Sulfur-FRGAS, the foreign refiner must meet all the following requirements:

(i) The designation requirements in this section.

(ii) The recordkeeping requirements in §§ 80.360 and 80.365.

(iii) The reporting requirements in § 80.370 and this section.

(iv) The product transfer document requirements in this section.

(v) The prohibitions in this section and § 80.385.

(vi) The independent audit requirements in § 80.415 and paragraph (h) of this section.

(3)(i) Any foreign refiner that has been assigned an individual sulfur baseline for a foreign refinery under paragraph (b) of this section may elect to classify no gasoline imported into the United States as Sulfur-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(ii) An election under paragraph (c)(3)(i) of this section must:

(A) Be for an entire calendar year averaging period and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election takes effect at the beginning of the next calendar year.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been assigned an individual sulfur baseline must designate each batch of Sulfur-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Sulfur-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Sulfur-FRGAS prior to its being imported into the United States, they must include the following information as part of the product transfer document information in this section:

(i) Identification of the gasoline as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Sulfur-FRGAS was produced.

(3) On each occasion when Sulfur-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner must prepare a certification for each batch of the Sulfur-FRGAS that meets the following requirements:

(i) The certification must include the report of the independent third party

under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Sulfur-FRGAS;

(B) The identification of the gasoline as Certified Sulfur-FRGAS or Non-Certified Sulfur-FRGAS, and for Certified Sulfur-FRGAS the information required by § 80.360;

(C) The volume of Sulfur-FRGAS being transported, in gallons;

(D) A declaration that the Sulfur-FRGAS is being included in the compliance baseline calculations under § 80.250 for the refinery that produced the Sulfur-FRGAS; and

(E) In the case of Certified Sulfur-FRGAS:

(1) The sulfur content as determined under paragraph (f) of this section; and

(2) A declaration that the Sulfur-FRGAS is being included in the compliance calculations under § 80.205 for the refinery that produced the Sulfur-FRGAS.

(ii) The certification must be made part of the product transfer documents for the Sulfur-FRGAS.

(e) *Transfers of Sulfur-FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as Sulfur-FRGAS is imported into the United States. A foreign refiner may remove the Sulfur-FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1)(i) The foreign refiner excludes:

(A) The volume of gasoline from the refinery's compliance baseline calculations under § 80.250; and

(B) In the case of Certified Sulfur-FRGAS, the volume and sulfur content of the gasoline from the compliance calculations under § 80.205;

(ii) The exclusions under paragraph (e)(1)(i) of this section must be on the basis of the parameter and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner must have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of Sulfur-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the Sulfur-FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion Certified Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner must have an independent third party:

(i) Collect a representative sample of the Certified Sulfur-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for sulfur using the methodology specified in § 80.330 by:

(A) The third party analyzing the sample; or

(B) The third party observing the foreign refiner analyze the sample;

(iii) Review original documents that reflect movement and storage of the certified Sulfur-FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the Sulfur-FRGAS was produced; and

(B) That the Sulfur-FRGAS remained segregated from:

(1) Non-Sulfur-FRGAS and Non-Certified Sulfur-FRGAS; and

(2) Other Certified Sulfur-FRGAS produced at a different refinery.

(3) The independent third party must submit a report:

(i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report must include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) The independent third party must:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) Be independent under the criteria specified in § 80.65(f)(2)(iii); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Any foreign refiner and any United States importer of Certified Sulfur-FRGAS must compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the sulfur value; except that

(ii) Where a vessel transporting Certified Sulfur-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner, that meets the requirements of paragraph(s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of this paragraph (g)(2) apply if:

(A) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(B) The sulfur value determined at the port of entry is higher than the sulfur value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM).

(ii) The United States importer and the foreign refiner must treat the gasoline as Non-Certified Sulfur-FRGAS, and the foreign refiner must:

(A) Exclude the gasoline volume and properties from its gasoline sulfur compliance calculations under § 80.205; and

(B) Include the gasoline volume in its compliance baseline calculation under § 80.250.

(h) *Attest requirements.* The following additional procedures must be carried out by any foreign refiner of Sulfur-FRGAS as part of the attest engagement for each foreign refinery under § 80.415:

(1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) must include Non-Sulfur-FRGAS in addition

to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Sulfur-FRGAS, and of Non-Certified Sulfur-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Sulfur-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Sulfur-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Sulfur-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Sulfur-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Sulfur-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Sulfur-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the Certified Sulfur-FRGAS was mixed with any Non-Certified Sulfur-FRGAS, Non-Sulfur-FRGAS, or any Certified Sulfur-FRGAS produced at a different refinery.

(5) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport certified and Non-Certified Sulfur-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel.

(ii) Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Sulfur-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under this paragraph (h)(6) where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor must:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in § 80.125 through 130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of § 80.125 through 80.130 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner must commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery sulfur baseline.

(1) Any United States Environmental Protection Agency inspector or auditor must be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either unannounced in advance by EPA, or unannounced.

(ii) Access must be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Sulfur-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and sulfur content, and transfers of title or custody, of any gasoline or blendstocks, whether Sulfur-FRGAS or Non-Sulfur-FRGAS, produced at the foreign refinery during the period January 1, 1997 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The volume and sulfur content of Sulfur-FRGAS;

(C) The proper classification of gasoline as being Sulfur-FRGAS or as not being Sulfur-FRGAS, or as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS;

(D) Transfers of title or custody to Sulfur-FRGAS;

(E) Sampling and testing of Sulfur-FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.415, including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia must be named, and service on this agent

constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder are governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery sulfur baseline, producing and exporting gasoline under an individual refinery sulfur baseline, and all other actions to comply with the requirements of this subpart relating to the establishment and use of an individual refinery sulfur baseline constitute actions or activities that satisfy the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(6) The foreign refiner, or its agents or employees, must not detain or impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) must be signed by the owner or president of the foreign refiner business.

(8) In any case where Sulfur-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Sulfur-FRGAS to the United States, the foreign refiner must obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments must be included in the foreign refiner's baseline petition.

(j) *Sovereign immunity.* By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery sulfur baseline under this section, the foreign refiner, its agents

and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(k) *Bond posting.* Any foreign refiner must meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery sulfur baseline.

(1) The foreign refiner must post a bond of the amount calculated using the following equation:

$$\text{Bond} = G \times \$0.01$$

Where:

Bond = Amount of the bond in U. S. dollars.

G = The largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of five calendar years: the calendar year immediately preceding the date the baseline petition is submitted, the calendar year the baseline petition is submitted, and each succeeding calendar year.

(2) Bonds must be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases the foreign refiner must increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) must be used to satisfy any judicial

judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner must increase the bond to cover the amount used within 90 days of the date the bond is used.

(l) [Reserved]

(m) *English language reports.* Any report or other document submitted to EPA by a foreign refiner must be in English language, or must include an English language translation.

(n) *Prohibitions.* (1) No person may combine Certified Sulfur-FRGAS with any Non-Certified Sulfur-FRGAS or Non-Sulfur-FRGAS, and no person may combine Certified Sulfur-FRGAS with any Certified Sulfur-FRGAS produced at a different refinery, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer must meet the following requirements:

(1) Each batch of imported gasoline must be classified by the importer as being Sulfur-FRGAS or as Non-Sulfur-FRGAS, and each batch classified as Sulfur-FRGAS must be further classified as Certified Sulfur-FRGAS or as Non-certified Sulfur-FRGAS.

(2) Gasoline must be classified as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Sulfur-FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Sulfur-FRGAS, any United States importer must perform the following procedures:

(i) In the case of both Certified and Non-Certified Sulfur-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Sulfur-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Sulfur-FRGAS;

(C) Determine the name and country of registration of the vessel used to

transport the Sulfur-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Sulfur-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the sulfur value using the methodologies specified in § 80.330, by:

(1) The third party analyzing the sample; or

(2) The third party observing the importer analyze the sample.

(4) Any importer must submit reports within thirty days following the date any vessel transporting Sulfur-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5) Any United States importer must meet the requirements specified in § 80.195 for any imported gasoline that is not classified as Certified Sulfur-FRGAS under paragraph (o)(2) of this section.

(p) [Reserved]

(q) *Withdrawal or suspension of a foreign refinery's baseline* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) Any refiner whose Sulfur-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the requirements for certification under paragraph (d)(5) of this section, load port and port of entry sampling and testing under paragraphs (f) and (g) of this section, attest under paragraph (h) of this section and importer testing under paragraph (o)(3) of this section.

These alternative procedures must ensure Certified Sulfur-FRGAS remains segregated from Non-Certified Sulfur-FRGAS and from Non-Sulfur-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

(1) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Sulfur-FRGAS from that refinery from all other gasoline.

(2) Contracts with any terminals and/or pipelines that receive and/or transport Certified Sulfur-FRGAS, that prohibit the commingling of Certified Sulfur-FRGAS with any of the following:

(i) Other Certified Sulfur-FRGAS from other refineries.

(ii) All Non-Certified Sulfur-FRGAS.

(iii) All Non-Sulfur-FRGAS.

(3) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Sulfur-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States.

(4) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Sulfur-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(5) The petition required by this section must be submitted to EPA along with the application for small refiner status and individual refinery sulfur baseline and standards under § 80.235 and this section.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under paragraph (b) of this section, any alternative procedures under paragraph (r) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) of this section must be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and must contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR Part 80, subpart H and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand the provisions of 40 CFR Part 80, subpart H, including 40 CFR § 80.410 [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000, and/or imprisonment for up to five years.

Attest Engagements

§ 80.415 What are the attest engagement requirements for gasoline sulfur compliance?

Refiners and importers, for each annual averaging period, must arrange to have an attest engagement performed of the underlying documentation that forms the basis of any report required under this section. The attest engagement must comply with the procedures and requirements that apply to refiners and importers under §§ 80.125 through 80.130, and must be submitted to the Administrator of EPA by May 30 of each year.

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

5. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7601(a).

6. Section 85.1515 is amended by redesignating the existing paragraph (c) as paragraph (c)(1) and adding new paragraphs (c)(2), (c)(3), (c)(4) and (c)(5) to read as follows:

§ 85.1515 Emission standards and test procedures applicable to imported nonconforming motor vehicles and motor vehicle engines.

* * * * *

(c)(1) * * *

(2) The provisions of paragraph (c)(1) of this section notwithstanding, nonconforming light duty vehicles or

light light-duty trucks (LDV/LLDTs) modified in model years 2004, 2005 or 2006 must meet the interim FTP exhaust and evaporative emission standards for light duty vehicles and light light-duty trucks specified in 40 CFR 86.1811-04(l) and 86.1811-04(e)(5). Nonconforming LDT3s and LDT4s (HLDTs) modified in model years 2004 through 2008 must meet the interim non-Tier 2 FTP exhaust and evaporative standards for HLDTs specified in 40 CFR 86.1811-04(l) and 86.1811-04(e)(5). Optionally, independent commercial importers may elect to meet the Tier 2 FTP exhaust and evaporative emission standards set forth in 40 CFR 86.1811-04(c) and (e) during those years. ICIs are exempt from the Tier 2 and the interim non-Tier 2 phase-in percentage requirements described in 40 CFR 86.1811-04.

(3) Nonconforming light duty vehicles and light light-duty trucks (LDV/LLDTs) modified in model years 2007 or later must meet the exhaust and evaporative emission requirements set forth for all 2007 and later model year LDV/LLDTs in 40 CFR 86.1811-04.

(4) Nonconforming heavy light-duty trucks (HLDTs) modified in model years 2009 or later must meet the exhaust and evaporative emission requirements set forth for all 2009 and later model year HLDTs in 40 CFR 86.1811-04.

(5) The requirements of 40 CFR 86.1811-04 related to fleet average NO_x standards and requirements to comply with such standards do not apply to vehicles modified under this subpart.

* * * * *

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

7. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

8. Section 86.1 is amended by revising the entry for "California Regulatory Requirements Applicable to the National Low Emission Vehicle Program, October, 1996", and by adding an entry in alphabetical order in the table in paragraph (b)(4) to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(4) * * *

Document No. and name	40 CFR part 86 reference
<p>California Regulatory Requirements Applicable to the "LEV II" Program, including</p> <ol style="list-style-type: none"> 1. Amendments to California Exhaust and Evaporative Emission Standards and Test Procedures for Passenger Cars, Light-duty Trucks and Medium-duty Vehicles and Amendments to California Motor Vehicle Certification, Assembly-line and In-use Test Requirements "CAP 2000". 2. California Zero-Emission and Hybrid Electric Vehicle Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Passenger Cars, Light-duty Trucks and Medium-duty Vehicles. 3. California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-duty Trucks and Medium-duty Vehicles. 4. California Non-Methane Organic Gas Test Procedures. 5. California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles. 6. California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles. <p>California Regulatory Requirements Applicable to the National Low Emission Vehicle Program, October 1996.</p>	<p>86.1830-01; 86.1806-01; 86.1810-01; 86.1811-04; 86.1844-01.</p> <p>86.113-004; 86.612-97; 86.1012-97; 86.1702-99; 86.1708-99; 86.1709-99; 86.1717-99; 86.1735-99; 86.1771-99; 86.1775-99; 86.1776-99; 86.1777-99; Appendix XVI; Appendix XVII.</p>

Subpart B—Emission Regulations for 1997 and Later Model Year New Light-duty Vehicles and New Light-duty Trucks; Test Procedures

9. Section 86.113-04 is added to read as follows:

§ 86.113-04 Fuel Specifications.

This section includes text that specifies requirements that differ from § 86.113-94. Where a paragraph in § 86.113-94 is identical and applicable to this section, this will be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.113-94."

(a) *Gasoline fuel.* (1) Gasoline having the following specifications will be used

by the Administrator in exhaust and evaporative emission testing of petroleum-fueled Otto-cycle vehicles. Gasoline having the following specification or substantially equivalent specifications Approved by the Administrator, must be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply:

Item	ASTM test method No.	Value
Octane, Research, Min.	D2699	93.
Sensitivity, Min. ....		.7.5
Lead (organic), maximum: g/U.S. gal. (g/liter)	D3237	0.050 (0.013).
Distillation Range	D86	
IBP ¹ : deg. F (deg. C)		75-95 (23.9-35).
10 pct. point: deg.F (deg.C)		120-135 (48.9-57.2).
50 pct. point: deg.F. (deg.C)		200-230 (93.3-110).
90 pct. point: deg.F (deg.C)		300-325 (148.9-162.8).
EP, max: deg.F (deg.C) D86		415 (212.8).
Sulfur, weight pct.	D1266	0.003-0.008.
Phosphorous, max. g/U.S. gal (g/liter)	D3231	0.005 (0.0013).
RVP ^{2,3}	D3231	8.7-9.2 (60.0-63.4).
Hydrocarbon composition	D1319	
Olefins, max. pct.		10.
Aromatics, max, pct.		35.
Saturates		Remainder.

¹ For testing at altitudes above 1,219 m (4000 feet), the specified range is 75-105 deg. F (23.9-40.6 deg. C).

² For testing which is unrelated to evaporative emission control, the specified range is 8.0-9.2 psi (55.2-63.4 kPa).

³ For testing at altitudes above 1,219 m (4000 feet), the specified range is 7.6-8.0 psi (52-55 kPa).

(2) For light-duty vehicles and light-duty trucks certified for 50 state sale, "California Phase 2" gasoline having the specifications listed in the table in this section may be used in exhaust emission testing as an option to the specifications in paragraph (a)(1) of this section. If a manufacturer elects to

utilize this option, exhaust emission testing must be conducted by the manufacturer with gasoline having the specifications listed in the table in this paragraph (a)(2) and the Administrator must also conduct exhaust emission testing with gasoline having the specifications listed in the table in this

paragraph (a)(2), except that the Administrator may use or require the use of test fuel meeting the specifications in paragraph (a)(1) of this section for selective enforcement auditing and in-use testing. All fuel property test methods for this fuel are contained in Chapter 4 of the California

Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996). These requirements are incorporated by reference (see § 86.1). The table follows:

Fuel property	Limit
Octane, (R+M)/2 (min)	91.
Sensitivity (min)	7.5.
Lead, g/gal (max) (No lead added)	0–0.01.
Distillation Range, °F	
10 pct. point,	130–150.
50 pct. point,	200–210.
90 pct. point,	290–300.
EP, maximum	390.
Residue, vol% (max)	2.0.
Sulfur, ppm by wt.	30–40.
Phosphorous, g/gal (max)	0.005.
RVP, psi	6.7–7.0.
Olefins, vol %	4.0–6.0.
Total Aromatic Hydrocarbons (vol%)	22–25.
Benzene, vol %	0.8–1.0.
Multi-Substituted Alkyl Aromatic Hydrocarbons, vol%	12–14.
MTBE, vol%	10.8–11.2.
Additives	See Chapter 4 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996). These procedures are incorporated by reference (see § 86.1).
Copper Corrosion	No. 1.
Gum, Washed, mg/100 ml (max)	3.0.
Oxidation Stability, minutes (min)	1000.
Specific Gravity	No limit; report to purchaser required.
Heat of Combustion	No limit; report to purchaser required.
Carbon, wt%	No limit; report to purchaser required.
Hydrogen, wt%	No limit; report to purchaser required.

(3)(i) Unless otherwise approved by the Administrator, unleaded gasoline representative of commercial gasoline that will be generally available through retail outlets must be used in service accumulation. Unless otherwise approved by the Administrator, where the vehicle is to be used for evaporative emission durability demonstration, such fuel must contain ethanol as required by § 86.1824–01(a)(2)(iii). Leaded gasoline must not be used in service accumulation.

(ii) The octane rating of the gasoline used must be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(iii) The Reid Vapor Pressure of the gasoline used must be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(4) The specification range of the gasoline to be used under paragraph (a) of this section must be reported in

accordance with §§ 86.094–21(b)(3) and 86.1844–01.

(b) through (g) “[Reserved]. For guidance see § 86.113–94.”

6. Section 86.129–00 is amended by adding a new paragraph (f)(1)(ii)(C) to read as follows:

§ 86.129–00 Road load power, test weight, and inertia weight class determination.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(C) Regardless of other requirements in this section relating to the testing of heavy light duty trucks, for Tier 2 heavy light duty trucks, the test weight basis for FTP and SFTP testing (both US06 and SC03) is the vehicle curb weight plus 300 pounds.

* * * * *

Subpart C—Emission Regulations for 1994 and Later Model Year Gasoline-Fueled New Light-duty Vehicles and New Light-duty Trucks; Cold Temperature Test Procedures

10. Section 86.213–04 is added to read as follows:

§ 86.213–04 Fuel specifications.

Gasoline having the following specifications will be used by the Administrator. Gasoline having the specifications set forth in the table in this section may be used by the manufacturer except that the octane specification does not apply. In lieu of using gasoline having these specifications, the manufacturer may, for certification testing, use gasoline having the specifications specified in § 86.113–04 provided the cold CO emissions are not decreased. Documentation showing that cold CO emissions are not decreased must be maintained by the manufacturer and must be made available to the Administrator upon request. The table listing the cold CO fuel specifications described in the text in this section follows:

TABLE—COLD CO FUEL SPECIFICATIONS

Item	Cold CO low octane value or		Cold CO high octane ¹ value or range
	ASTM test	Range	
(RON+MON)/2, min	D2699	87.8<plus-minus>.3	92.3<plus-minus>0.5.
Sensitivity, min	D2699	7.5	7.5.
Distillation range:			
IBP, deg.F	D86	76–96	76–96.
10% point, deg.F	D86	98–118	105–125.
50% point, deg.F	D86	179–214	195–225.
90% point, deg.F	D86	316–346	316–346.
EP, max, deg.F	D86	413	413.
Sulfur, wt. %	D3120	0.003–0.008	0.003–0.008.
Phosphorous, g/U.S gal, max	D3231	0.005	0.005.
Lead, g/gal, max		0.01	0.01.
RVP, psi	D4953	11.5<plus-minus>.3	11.5<plus-minus>.3.
Hydrocarbon composition	D1319		
Olefins, vol. pct		12.5<plus-minus>5.0	10.0<plus-minus>5.0.
Aromatics, vol. pct		26.4<plus-minus>4.0	32.0<plus-minus>4.0.
Saturates		Remainder	Remainder.

¹ Gasoline having these specifications may be used for vehicles which are designed for the use of high-octane premium fuel.

Subpart R—General Provisions for the Voluntary National Low Emission Vehicle Program for Light-duty Vehicles and Light-duty Trucks

11. Section 86.1701–99 is amended by adding paragraph (f) to read as follows:

§ 86.1701–99 General applicability.

* * * * *

(f) The provisions of this subpart are not applicable to 2004 or later model year vehicles, except where specific references to provisions of this subpart are made in conjunction with provisions applicable to such vehicles.

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-use Light-duty Vehicles and Light-duty Trucks

12. Section 86.1801–01 is amended by revising the first sentence of paragraph (a) and the first sentence of paragraph (e) and adding paragraphs (f) and (g) to read as follows:

§ 86.1801–01 Applicability.

(a) Except as otherwise indicated, the provisions of this subpart apply to new 2001 and later model year Otto-cycle and diesel cycle light duty vehicles and light duty trucks, including alternative fueled, hybrid electric, and zero emission vehicles.* * *

* * * * *

(e) *National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks.* A manufacturer may elect to certify 2001–2003 model year light duty vehicles and light light-duty trucks (LDV/LLDTs) to the provisions of the National Low Emission Vehicle Program contained in Subpart R of this part.* * *

(f) *“Early” Tier 2 LDV/Ts.* Any LDV/LLDT which is certified to Tier 2 FTP exhaust standards prior to the 2004 model year, or any HLDLT which is certified to the Tier 2 FTP exhaust standards prior to the 2008 model year, to utilize alternate phase-in schedules and/or for purposes of generating and banking NO_x credits, must comply with all the exhaust emission requirements applicable to Tier 2 LDV/Ts under this subpart.

(g) *Interim non-Tier 2 LDV/Ts.* Model year 2004–2008 LDV/Ts, that do not comply with the Tier 2 FTP exhaust emission requirements (interim non-Tier 2 LDV/Ts) as permitted under the phase-in requirements of § 86.1811–04(k) must comply with all interim non-Tier 2 exhaust emission requirements contained in this subpart, including FTP exhaust emission requirements for all interim non-Tier 2 LDV/Ts found at § 86.1811–04(l). Separate emission requirements are provided for interim non-Tier 2 LDV/LLDTs and interim non-Tier 2 HLDLTs.

13. Section 86.1803–01 is amended by adding the following definitions in alphabetical order to read as follows:

§ 86.1803–01 Definitions.

* * * * *

Bin or emission bin means a set of emission standards applicable to exhaust pollutants measured on the Federal Test Procedure (FTP). A *bin* is equivalent to a horizontal row of FTP standards in the various charts shown in this subpart. Manufacturers are generally free to choose the bin of standards that will apply to a certain test group of vehicles, provided that on a sales weighted average of those bins, all of their vehicles meet a specified

fleet average standard for a particular pollutant.

* * * * *

CalLEV II or California LEV II refers to California's second phase of its low emission vehicle (LEV) program. This program was adopted at the hearing of the California Air Resources Board held on November 5, 1998.

* * * * *

Fleet average NO_x standard means, for light-duty vehicles and light-duty trucks, a NO_x standard imposed over an individual manufacturer's total U.S. sales (or a fraction of total U.S. sales during phase-in years), as “U.S. sales” is defined in this subpart, of light duty vehicles and trucks of a given model year. Manufacturers determine their compliance with such a standard by averaging, on a sales weighted basis, the individual NO_x standards they choose for the fleet of light duty vehicles and trucks they sell of that model year.

* * * * *

Interim non-Tier 2 vehicle or interim non-Tier 2 LDV/T or interim vehicle means any 2004 or later model year light duty vehicle or light duty truck not certified to Tier 2 FTP exhaust emission standards during the Tier 2 phase-in period.

* * * * *

LDV/T means light duty vehicles and light duty trucks collectively, without regard to category.

* * * * *

Non-methane organic gases (NMOG) means the sum of oxygenated and non-oxygenated hydrocarbons contained in a gas sample as measured in accordance with the California Non-Methane Organic Gas Test Procedures. These

requirements are incorporated by reference (see § 86.1).

* * * * *

Periodically regenerating trap oxidizer system means a trap oxidizer that utilizes, during normal driving conditions, an automated regeneration mode for cleaning the trap, the operation of which can be easily detected.

* * * * *

Point of first sale means the location where the completed light duty vehicle or light duty truck is first purchased. This term is synonymous with final product purchase location. The point of first sale may be a retail customer, dealer, distributor, fleet operator, broker, secondary manufacturer, or any other entity which purchases a vehicle from a manufacturer. In cases where the end user purchases the completed vehicle directly from the manufacturer, the end user is the point of first sale.

* * * * *

Round, rounded or rounding means, unless otherwise specified, that numbers will be rounded according to ASTM-E29-93a, which is incorporated by reference in this part pursuant to § 86.1.

* * * * *

Tier 2 standards means those FTP exhaust emission standards applicable to new light-duty vehicles and light duty trucks and that begin a phase-in in the 2004 model year, and those exhaust emission standards applicable to heavy light duty trucks that begin a phase-in in the 2008 model year. These standards are found in § 86.1811-04.

Tier 2 vehicle or *Tier 2 LDV/T* means any light duty vehicle or light duty truck, including HEVs and ZEVs, of the 2004 or later model year certified to comply with the Tier 2 FTP exhaust standards contained in § 86.1811-04. The term Tier 2 vehicle also includes any light duty vehicle or truck, of any model year, which is certified to Tier 2 FTP exhaust standards for purposes of generating or banking early NO_x credits for averaging under Tier 2 requirements as allowed in this subpart.

* * * * *

U.S. sales means, unless otherwise specified, sales in any state of the United States except for California or a state that has adopted California motor vehicle standards for that model year pursuant to section 177 of the Clean Air Act. This definition applies only to those regulatory requirements addressing Tier 2 and interim non-Tier 2 LDV/Ts.

* * * * *

14. Section 86.1804-01 is amended by adding the following acronyms and

abbreviations, in alphabetical order, to read as follows:

§ 86.1804-01 Acronyms and abbreviations.

* * * * *

HCHO—Formaldehyde.

* * * * *

HEV—Hybrid electric vehicle.

* * * * *

HLDT—Heavy light duty truck. Includes only those trucks over 6000 pounds GVWR (LDT3s and LDT4s).

* * * * *

LDV/LLDT—Light duty vehicles and light light-duty trucks. Includes only those trucks rated at 6000 pounds GVWR or less (LDT1s and LDT2s).

LDV/T—Light duty vehicles and light duty trucks. This term is used collectively to include, or to show that a provision applies to, all light duty vehicles and all categories of light duty trucks, i.e.

LDT1, LDT2, LDT3 and LDT4.

LEV—Low Emission Vehicle.

* * * * *

NLEV—Refers to the National Low Emission Vehicle Program. Regulations governing this program are found at subpart R of this part.

* * * * *

NMOG—Non-methane organic gases.

* * * * *

RAF—Reactivity adjustment factor.

* * * * *

SULEV—Super Ultra Low Emission Vehicle.

* * * * *

TLEV—Transitional Low Emission Vehicle.

* * * * *

ULEV—Ultra Low Emission Vehicle.

* * * * *

ZEV—Zero Emission Vehicle.

* * * * *

15. Section 86.1805-04 is added to read as follows:

§ 86.1805-04 Useful life.

(a) Except as required under paragraph (b) of this section or permitted under paragraphs (d) and (e) of this section, the full useful life for all LDVs, LDT1s and LDT2s is a period of use of 10 years or 120,000 miles, whichever occurs first. For all HLDTs, full useful life is a period of 11 years or 120,000 miles, whichever occurs first. This full useful life applies to exhaust, evaporative and refueling emission requirements except for standards which are specified to only be applicable at the time of certification.

(b) Manufacturers may elect to optionally certify a test group to the Tier 2 exhaust emission standards for 150,000 miles to gain additional NO_x credits, as permitted in § 86.1860-04(g). In such cases, useful life is a period of use of 15 years or 150,000 miles, whichever occurs first, for all exhaust,

evaporative and refueling emission requirements except for cold CO standards and standards which are applicable only at the time of certification.

(c) Where intermediate useful life exhaust emission standards are applicable, such standards are applicable for five years or 50,000 miles, whichever occurs first.

(d)(1) Manufacturers may petition the Administrator to provide alternative useful life periods for idle CO requirements for light duty trucks when they believe that the useful life period described in this section is significantly unrepresentative for one or more test groups (either too long or too short). This petition must include the full rationale behind the request, together with any supporting data and other evidence. Based on this or other information, the Administrator may assign an alternative useful life period. Any petition should be submitted in a timely manner to allow adequate time for a thorough evaluation.

(2) Where cold CO standards are applicable, the useful life requirement for compliance with the cold CO standard only, is 5 years or 50,000 miles whichever occurs first.

(e) Where LDVs, LDT1s and LDT2s of the 2003 or earlier model years are certified to Tier 2 exhaust emission standards for purposes of generating early NO_x credits, manufacturers may certify those vehicles to full useful lives of 100,000 miles in lieu of the otherwise required 120,000 mile full useful lives, as provided under § 86.1861-04(c)(4).

16. Section 86.1806-01 is amended by adding paragraph (b)(8) to read as follows:

§ 86.1806-01 On-board diagnostics.

* * * * *

(b)* * *

(8) *For Tier 2 and interim non-Tier 2 hybrid electric vehicles (HEVs) only.* Unless added to HEVs in compliance with other requirements of this section, or unless otherwise approved by the Administrator:

(i) The manufacturer must equip each HEV with a maintenance indicator consisting of a light that must activate automatically by illuminating the first time the minimum performance level is observed for each battery system component. Possible battery system components requiring monitoring are: battery water level, temperature control, pressure control, and other parameters critical for determining battery condition.

(ii) The manufacturer must equip "off-vehicle charge capable HEVs" with a useful life indicator for the battery

system consisting of a light that must illuminate the first time the battery system is unable to achieve an all-electric operating range (starting from a full state-of-charge) which is at least 75 percent of the range determined for the vehicle in the Urban Driving Schedule portion of the All-Electric Range Test (see the California Zero-Emission and Hybrid Electric Vehicle Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium Duty Vehicles. These requirements are incorporated by reference (see § 86.1)

(iii) The manufacturer must equip each HEV with a separate odometer or other device subject to the approval of the Administrator that can accurately measure the mileage accumulation on the engines used in these vehicles.

* * * * *

17. Section 86.1807-01 is amended by revising paragraph (a)(3)(vi) to read as follows:

§ 86.1807-01 Vehicle labeling.

(a) * * *

(3) * * *

(vi) The exhaust emission standards to which the test group is certified, and for test groups having different in-use standards, the corresponding exhaust emission standards that the test group must meet in use. In lieu of this requirement, manufacturers may use the standardized test group name designated by EPA;

* * * * *

18. Section 86.1809-01 is amended by adding paragraph (e) to read as follows:

§ 86.1809-01 Prohibition of defeat devices.

* * * * *

(e) For each test group of Tier 2 and interim non-Tier 2 LDV/Ts, the manufacturer must submit, with the Part II certification application, an engineering evaluation demonstrating to the satisfaction of the Administrator that a discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde measured on the Federal Test Procedure (subpart B of this part) does not occur in the temperature range of 20 to 86 degrees F. For diesel vehicles, the engineering evaluation must also include particulate emissions.

19. Section 86.1810-01 is amended by adding two new sentences to the end of the introductory text; by adding a new sentence to the end of paragraph (i)(6); and by adding new paragraphs (i)(13), (i)(14), (o) and (p) to read as follows:

§ 86.1810-01 General standards; increase in emissions; unsafe conditions; waivers.

* * * For Tier 2 and interim non-Tier 2 LDV/Ts, this section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled LDV/Ts.

* * * * *

(i) * * *

(6) * * * For Tier 2 and interim non-Tier 2 LDV/Ts, this provision does not apply to enrichment that occurs upon cold start, warm-up conditions and rapid-throttle motion conditions ("tip-in" or "tip-out" conditions).

* * * * *

(13) *A/C-on specific calibrations.* (i) For Tier 2 and interim non-Tier 2 LDV/Ts, A/C-on specific calibrations (e.g. air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters).

(ii) Such calibrations must not unnecessarily reduce the NMHC+NO_x emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use.

(iii) If reductions in control system NMHC+NO_x effectiveness do occur as a result of such calibrations, the manufacturer must, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness.

(iv) A/C-on specific "open-loop" or "commanded enrichment" air-fuel enrichment strategies (as defined below), which differ from A/C-off "open-loop" or "commanded enrichment" air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. Other than these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters must use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of

whether the A/C is on or off. "Open-loop" or "commanded" air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions control hardware. However, "closed-loop biasing," defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, must not be considered an "open-loop" or "commanded" air-fuel enrichment strategy. In addition, "transient" air-fuel enrichment strategy (or "tip-in" and "tip-out" enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, must not be considered an "open-loop" or "commanded" air-fuel enrichment strategy.

(14) *"Lean-on-cruise" calibration strategies.* (i) For Tier 2 and interim non-Tier 2 LDV/Ts, the manufacturer must state in the Application for Certification whether any "lean-on-cruise" strategies are incorporated into the vehicle design. A "lean-on-cruise" air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph. "Lean-on-cruise" air-fuel calibration strategies must not be employed during vehicle operation in normal driving conditions, including A/C usage, unless at least one of the following conditions is met:

(A) Such strategies are substantially employed during the FTP or SFTP;

(B) Such strategies are demonstrated not to significantly reduce vehicle NMHC+NO_x emission control effectiveness over the operating conditions in which they are employed; or

(C) Such strategies are demonstrated to be necessary to protect the vehicle occupants, engine, or emission control hardware.

(ii) If the manufacturer proposes to use a "lean-on-cruise" calibration strategy, the manufacturer must specify the circumstances under which such a calibration would be used, and the reason or reasons for the proposed use of such a calibration.

* * * * *

(o) Unless otherwise approved by the Administrator, manufacturers must measure NMOG emissions in accordance with the California Non-Methane Organic Gas Test Procedures. These procedures are incorporated by reference (see § 86.1).

(p) For diesel vehicles, manufacturers may measure non-methane hydrocarbons in lieu of NMOG.

20. Section 86.1811-01 is amended by adding a sentence to the end of the introductory text to read as follows:

§ 86.1811-01 Emission standards for light-duty vehicles.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811-04.

* * * * *

21. Section 86.1811-04 is added to read as follows:

§ 86.1811-04 Emission standards for light duty vehicles and light duty trucks.

(a) *Applicability.* (1) This section contains regulations implementing emission standards for all light duty vehicles and light duty trucks (LDV/Ts). This section applies to 2004 and later model year LDV/Ts fueled by gasoline, diesel, methanol, ethanol, natural gas and liquefied petroleum gas fuels, except as noted. Additionally, this section contains provisions applicable to hybrid electric vehicles (HEVs) and zero emission vehicles (ZEVs). Multi-fueled vehicles must comply with all requirements established for each consumed fuel.

(2)(i) This section also applies to LDV/LLDTs of model years prior to 2004, when manufacturers certify such vehicles to Tier 2 exhaust emission requirements to utilize alternate phase-in schedules, as allowed under paragraph (k)(6) of this section, and/or to earn NO_x credits for use in complying with the Tier 2 fleet average NO_x standard which takes effect in the 2004 model year for LDV/LLDTs.

(ii) This section also applies to HLDTs of model years prior to 2004, when manufacturers certify such vehicles to Tier 2 exhaust emission requirements to utilize alternate phase-in schedules as allowed under paragraph (k)(6) of this section.

(3) Except where otherwise specified, this section applies instead of

§§ 86.1811-01, 86.1812-01, 86.1813-01, 86.1814-01, 86.1814-02, 86.1815-01, and 86.1815-02.

(4) Except where otherwise specified, the provisions of this section apply equally to LDVs and all categories of LDTs, as reflected by the use of the term LDV/T.

(5) The exhaust emission standards and evaporative emission standards of this section apply equally to certification and in-use LDV/Ts unless otherwise specified.

(b) *Test weight.* (1) Except as required in paragraph (b)(2) of this section, emission testing of all LDV/Ts to determine compliance with any exhaust or evaporative emission standard set forth in this part must be on a loaded vehicle weight (LVW) basis, as that term is defined in this subpart.

(2) Interim non-Tier 2 HLDTs tested to Tier 1 SFTP standards, must be tested on an adjusted loaded vehicle weight (ALVW) basis, as that term is defined in this subpart, during the SC03 element of the SFTP.

(c) *Tier 2 FTP exhaust emission standards.* Exhaust emissions from Tier 2 LDV/Ts must not exceed the standards in Table S04-1 of this section at full useful life when tested over the Federal Test Procedure (FTP) described in subpart B of this part. Exhaust emissions from Tier 2 LDV/Ts must not exceed the standards in Table S04-2 of this section at intermediate useful life, if applicable, when tested over the FTP. Manufacturers of LDV/Ts must meet these standards according to the phase-in schedules shown in Tables S04-6 and S04-7 of this section.

(1) For a given test group a manufacturer desires to certify to operate only on one fuel, the manufacturer must select a set of standards from the same bin (line or row) in Table S04-1 of this section for non-methane organic gases (NMOG), carbon monoxide (CO), oxides of nitrogen (NO_x), formaldehyde (HCHO)

and particulate matter (PM). The manufacturer must certify the test group to meet those standards, subject to all the applicable provisions of this subpart. The manufacturer must also certify the test group to meet the intermediate useful life standards (if any) in Table S04-2 of this section having the same EPA bin reference number as the chosen full useful life standards.

(2) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles when operated on the alcohol or gaseous fuel they are designed to use, manufacturers must select a bin of standards from Table S04-1 of this section and the corresponding bin in Table S04-2, if any. When these flexible-fueled, bi-fuel or dual fuel vehicles are certified to operate on gasoline or diesel fuel, the manufacturer may choose to comply with the next numerically higher NMOG standard above the bin which contains the standards selected for certification on the gaseous or alcohol fuel.

(3) The bin 7 NMOG value may be used by alternative fueled vehicles when operated on gasoline or diesel fuel when such vehicles are certified to bin 6 standards on the gaseous or alcohol fuel on which they are designed to operate.

(4) In addition to the bins shown in Tables S04-1 and 2 of this section, manufacturers may also use the applicable interim non-Tier 2 bins for Tier 2 vehicles. These bins are shown in Tables S04-8 and 9 of this section for LDV/LLDTs and Tables S04-10 and 11 of this section for HLDTs. These bins may only be used through the last model year of the duration of the applicable interim program, i.e. 2006 for LDV/LLDTs and 2008 for HLDTs. In a given model year, an individual vehicle may not be included in both the Tier 2 program and an interim program.

(5) Tables S04-1 and S04-2 follow:

TABLE S04-1.—TIER 2 LIGHT DUTY FULL USEFUL LIFE EXHAUST MASS EMISSION STANDARDS

[Grams per mile]

EPA bin No.	NMOG	CO	HCHO	NO _x	PM
7	^a 0.156	.....	.....	.....	.....
7	0.125	4.2	.018	0.20	0.02
6	0.090	4.2	0.018	0.15	0.02
5	0.090	4.2	0.018	0.07	0.01
4	0.055	2.1	0.011	0.07	0.01
3	0.070	2.1	0.011	0.04	0.01
2	0.010	2.1	0.004	0.02	0.01
1	0.000	0.0	0.000	0.00	0.0

^a Applicable only to flexible-fueled and dual-fuel bin 7 vehicles when certifying for operation on gasoline.

TABLE S04-2.—TIER 2 LIGHT DUTY INTERMEDIATE USEFUL LIFE EXHAUST MASS EMISSION STANDARDS
[Grams per mile]

EPA bin No.	NMOG	CO	HCHO	NO _x	PM ^b
7	^a 0.125	.....	.....	.....	.....
7	0.100	3.4	0.015	0.14	.....
6	0.075	3.4	0.015	0.11	.....
5	0.075	3.4	0.015	0.05	.....
4	0.040	1.7	0.008	0.05	.....

^a Applicable only to flexible-fueled and dual-fuel bin 7 vehicles when certifying for operation on gasoline.

^b The full useful life PM standards from Table S04-1 also apply at intermediate useful life.

(d) *Fleet average NO_x Standards.* (1) For a given individual model year's sales of Tier 2 LDV/Ts, including model years during the phase-in years of the Tier 2 standards, manufacturers must comply with a fleet average oxides of nitrogen (NO_x) standard of 0.07 grams per mile. The manufacturer must calculate its fleet average NO_x emission level(s) as described in § 86.1860-04. Up through and including model year 2008, manufacturers must calculate separate fleet average NO_x emission levels for LDV/LLDTs and HLDTs as described in § 86.1860-04.

(2) *For Early Tier 2 LDV/LLDTs.* For model years prior to 2004, where the manufacturer desires to bank early Tier 2 NO_x credits as permitted under § 86.1861(c), the manufacturer must comply with a fleet average standard of 0.07 grams per mile for its Tier 2 LDV/LLDTs. Manufacturers must determine compliance with the NO_x fleet average standard according to regulations in § 86.1860-04.

(3) *For Early Tier 2 HLDTs.* For model years prior to 2008, where the manufacturer desires to bank early Tier 2 NO_x credits as permitted under § 86.1861(c), the manufacturer must comply with a fleet average standard of 0.07 grams per mile for its Tier 2 HLDTs. Manufacturers must determine compliance with the NO_x fleet average standard according to regulations in § 86.1860-04.

(e) *Evaporative emission standards.* Consistent with the phase-in requirements in paragraph (k) of this

section, evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, ethanol-fueled and methanol-fueled LDV/Ts must not exceed the standards in this paragraph. The standards apply equally to certification and in-use LDV/Ts, except that the spitback standard applies only to newly assembled LDV/Ts.

(1) *Diurnal-plus-hot soak evaporative hydrocarbon standards.* Hydrocarbons for LDV/Ts must not exceed the diurnal plus hot soak standards shown in Table S04-3 for the full three diurnal test sequence and for the supplemental two diurnal test sequence. Table S04-3 follows:

TABLE S04-3.—LIGHT-DUTY DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS
[Grams per test]

Vehicle category	3 day diurnal + hot Soak	Supplemental 2 day diurnal + hot soak
LDVs, LDT1s and LDT2s	0.95	1.2
LDT3s and LDT4s ..	1.2	1.5

(2) *Running loss standard.* Hydrocarbons for LDV/Ts measured on the running loss test must not exceed 0.05 grams per mile.

(3) *Refueling emission standards.* Refueling emissions must not exceed the following standards:

(i) For gasoline-fueled, diesel-fueled and methanol-fueled LDV/Ts: 0.20 grams hydrocarbon per gallon (0.053 grams per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled LDV/Ts: 0.15 grams hydrocarbon per gallon (0.04 grams per liter) of fuel dispensed.

(iii) Refueling standards for LDT3s and LDT4s are subject to the phase-in requirements found in § 86.1810-01(k).

(4) *Spitback standards.* For gasoline and methanol fueled LDV/Ts, hydrocarbons measured on the fuel dispensing spitback test must not exceed 1.0 grams hydrocarbon (carbon if methanol-fueled) per test.

(5) Vehicles not certified to meet the evaporative emission standards in this paragraph (e) as permitted under the phase-in schedule of paragraph (k) of this section, must meet applicable evaporative emission standards in §§ 86.1811-01, 86.1812-01, 86.1813-01, 86.1814-02 or 86.1815-02 except that all LDV/Ts must meet the refueling emission standards in paragraph (e)(3) of this section.

(f) *Supplemental exhaust emission standards for LDV/Ts.* (1) Supplemental exhaust emissions from gasoline-fueled and diesel fueled LDV/Ts must not exceed the standards in Table S04-4 at full useful life. Supplemental exhaust emission standards are not applicable to alternative fueled LDV/Ts, or flexible fueled LDV/Ts when operated on a fuel other than gasoline or diesel. Table S04-4 follows:

TABLE S04-4.— FULL USEFUL LIFE SUPPLEMENTAL EMISSION STANDARDS (SFTP STANDARDS) FOR LDV/Ts
[Grams/mile]

Vehicle category	US06 NMHC+NO _x	US06 CO	SC03 NMHC+NO _x	SC03 CO
LDV/LDT1	0.20	11.1	0.26	4.2
LDT2	0.37	14.6	0.39	5.5
LDT3	0.53	16.9	0.44	6.4
LDT4	0.78	19.3	0.62	7.3

(2) Gasoline-fueled LDV/Ts, diesel-fueled LDV/Ts and flexible fueled LDV/Ts when operated on gasoline or diesel fuel, and subject to intermediate useful life FTP standards, must not exceed the intermediate useful life supplemental emission standards in Table S04-5, as follows:

TABLE S04-5.—INTERMEDIATE USEFUL LIFE SUPPLEMENTAL EMISSION STANDARDS (SFTP STANDARDS) FOR LDV/Ts
[Grams/mile]

Vehicle category	USO6 NMHC+NO _x	USO6 CO	SCO3 NMHC+NO _x	SCO3 CO
LDV/LDT1	0.16	9.0	0.22	3.0
LDT2	0.30	11.6	0.32	3.9
LDT3	0.45	11.6	0.36	3.9
LDT4	0.67	13.2	0.51	4.4

(3) For interim non-Tier 2 gasoline, diesel and flexible-fueled LDT3s and LDT4s, manufacturers may, at their option, meet the gasoline SFTP standards found in §§ 86.1814-02 and 86.1815-02, respectively.

(4) Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 5 FTP exhaust emission standards from Table S04-8 in this section may meet the gasoline Tier 1 SFTP requirements found at § 86.1811-01(b).

(g) *Cold temperature exhaust emission standards for LDV/Ts.* These standards are applicable only to gasoline fueled LDV/Ts. For cold temperature exhaust emission standards, a useful life of 50,000 miles applies.

(1) For LDVs and LDT1s, the standard is 10.0 grams per mile CO.

(2) For LDT2s, LDT3s and LDT4s, the standard is 12.5 grams per mile CO.

(h) *Certification short test exhaust emission standards for LDV/Ts.* Certification short test emissions from all gasoline-fueled otto cycle LDV/Ts must not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane, for certification and SEA testing; 220 ppm as hexane, for in-use testing.

(2) Carbon monoxide: 0.5% for certification and SEA testing; 1.2% for in-use testing.

(i) *Idle exhaust emission standards for light duty trucks.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas, and liquefied petroleum gas-fueled light duty trucks must not exceed 0.5% of exhaust gas flow at curb idle for the useful life of the trucks as defined in this part. This standard does not apply to light duty vehicles.

(j) *Highway NO_x exhaust emission standard for LDV/Ts.* The maximum projected NO_x emissions measured on the federal Highway Fuel Economy Test in 40 CFR part 600, subpart B, must not be greater than 1.33 times the applicable FTP NO_x standard to which the manufacturer certifies the test group. Both the projected emissions and the product of the NO_x standard and 1.33 must be rounded to the nearest 0.01 g/mi before being compared.

(k) *Phase-in of the Tier 2 FTP exhaust and evaporative requirements; small volume manufacturer flexibilities.* (1) Manufacturers must comply with the phase-in requirements in Tables S04-6 and S04-7 of this section for the Tier 2 FTP exhaust emission requirements specified in paragraph (c) of this section. Separate phase-in schedules are provided for LDV/LLDTs and HLDTs. These requirements specify the minimum percentage of the manufacturer's LDV/LLDT and HLDT U.S. sales, by model year, that must meet the Tier 2 requirements for their full useful lives. Tables S04-6 and S04-7 follow:

TABLE S04-6.—PHASE-IN PERCENTAGES FOR LDV/LLDT TIER 2 REQUIREMENTS

Model year	Percentage of LDV/LLDTs that must meet tier 2 requirements
2004	25
2005	50
2006	75
2007 and subsequent	100

TABLE S04-7.—PHASE-IN PERCENTAGES FOR HLDT TIER 2 REQUIREMENTS

Model year	Percentage of HLDTs that must meet tier 2 requirements
2008	50
2009 and subsequent	100

(2) Manufacturers must also comply with the phase-in requirements in Tables S04-6 and S04-7 of this section for the evaporative emission requirements contained in paragraph (e) of this section.

(3) Manufacturers may opt to use different LDV/LLDTs and HLDTs to meet the phase-in requirements for evaporative emissions and FTP exhaust emissions, provided that the manufacturer meets the minimum

phase-in requirements in Table S04-6 and Table S04-7 of this section for both FTP exhaust and evaporative emissions. A LDV or LDT counted toward compliance with any phase-in requirement for FTP exhaust or evaporative standards, must comply with all applicable Tier 2 exhaust requirements or all evaporative requirements, as applicable, described in this section.

(4) LDVs and LDTs not certified to meet the Tier 2 FTP exhaust requirements during model years 2004-2008, as allowed under this subpart, are subject to the provisions of paragraph (l) of this section. LDVs and LDTs not certified to meet the evaporative requirements in paragraph (e) of this section during model years 2004-2008, as allowed under this subpart, must meet all evaporative requirements found in §§ 86.1811-01, 86.1812-01, 86.1813-01, 86.1814-02 and 86.1815-02 as applicable, and the refueling requirements found in paragraph (e)(3) of this section.

(5)(i) Small volume manufacturers, as defined in this part, are exempt from the LDV/LLDT phase-in requirements for model years 2004, 2005 and 2006 in Table S04-6, but must comply with the 100% requirement for the 2007 and later model years.

(ii) Small volume manufacturers, as defined in this part, are exempt from the HLDT phase-in requirement for model year 2008 in Table S04-7 of this section and the interim fleet average NO_x standard and the phase-in of the HLDT interim non-Tier 2 FTP exhaust standards for the 2004, 2005 and 2006 model years.

(iii) Small volume manufacturers must comply with the interim non-Tier 2 FTP exhaust emission standards of bin 5 or lower from Tables S04-10 and 11 of this section for HLDTs of model years 2004, 2005 and 2006; the interim non-Tier 2 FTP exhaust standards from Tables S04-10 and 11 and the 0.20 g/mi fleet average NO_x standard for the 2007 and 2008 model year; and the Tier 2 FTP exhaust standards, evaporative standards, and the 0.07 g/mi fleet average NO_x standard for the 2009 and later model years.

(6)(i) A manufacturer may elect an alternate phase-in schedule that results in 100% phase-in for LDV/LLDTs by 2007. Alternate phase-in schedules must produce a sum of at least 250% when the percentages of LDV/LLDTs certified to Tier 2 requirements for each model year from 2001 through 2007 are summed. As an example, a 10/25/50/65/100 percent phase-in that began in 2003 would have a sum of 250 percent would be acceptable. However, a 10/25/40/70/100 percent phase-in that began the same year would have a sum of 245 percent and would not be acceptable.

(ii) A manufacturer electing this option for LDV/LLDTs may calculate its compliance with the evaporative standards in paragraph (e)(1) of this section separately from its compliance with Tier 2 exhaust standards, provided that the phase-in schedules for each separately produce a sum of at least 250 percent when calculated as described in paragraph (k)(6)(i) of this section. A vehicle counted towards compliance with any phase-in requirement for the Tier 2 exhaust standards or the evaporative standards in paragraph (e)(1) of this section, must comply with all applicable Tier 2 exhaust standards or all evaporative standards, as applicable, described in this section.

(iii) In addition to the requirements of paragraph (k)(6)(i) and (ii) of this section, a manufacturer of LDV/LLDTs electing to use an alternate phase-in schedule for compliance with the Tier 2 exhaust standards or the evaporative standards in paragraph (e)(1) of this section must ensure that the sum of the percentages of vehicles from model years 2001 through 2004, meeting such exhaust or evaporative standards, as applicable, is at least 25%.

(iv) A manufacturer may elect an alternate phase-in schedule that results in 100% phase-in for HLDTs by 2009. The requirements of paragraph (k)(6)(i) through (k)(6)(iii) of this section apply, except that for HLDTs, the calculation described in paragraph (k)(6)(i) of this section may cover model years 2001 through 2009 and must produce a sum of at least 150%.

(7)(i) Sales percentages for the purpose of determining compliance with the phase-in of the Tier 2 requirements and the phase-in of the evaporative standards in paragraph (e)(1) of this section, must be based upon projected U.S. sales of LDV/LLDTs and HLDTs of the applicable model year by the manufacturer to the point of first sale. Such sales percentages must be rounded to the nearest one tenth of a percent, and must not include vehicles and trucks projected to be sold to points of first sale in California or a state that has adopted California requirements for that model year as permitted under section 177 of the Act.

(ii) Alternatively, the manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of projected U.S. sales for purposes of determining compliance with the phase-in percentage requirements under this section. The manufacturer must submit its petition within 30 days of the end of the model year to the Vehicle Programs and Compliance Division. For EPA to approve the use of actual volume produced for U.S. sales, the manufacturer must establish to the satisfaction of the Administrator, that actual production volume is functionally equivalent to actual sales volume of LDV/LLDTs and HLDTs sold

in states other than California and states that have adopted California standards.

(iii) Manufacturers must submit information showing compliance with all phase-in requirements of this section with its Part I application as required by § 86.1844(d)(13).

(l) *FTP exhaust standards for interim non-Tier 2 LDV/LLDTs and HLDTs.* (1) *FTP exhaust emission standards for interim non-Tier 2 LDV/LLDTs.* (i) LDV/LLDTs that are not certified to meet Tier 2 FTP exhaust emission requirements during the Tier 2 phase-in period (model years 2004–2006) must comply with the full useful life FTP exhaust emission standards listed in Table S04–8 of this section and, the corresponding intermediate useful life standards, if any, in Table S04–9 of this section. Manufacturers may choose the bin of full useful life standards to which they certify a test group of vehicles, subject to the requirements in paragraph (l)(3)(i) of this section. In addition to the bins shown in Tables S04–8 and S04–9 of this section, manufacturers may also use the Tier 2 bins shown in Tables S04–1 and S04–2 of this section. Manufacturers may include LDV/LLDTs in the interim program that are not used to meet the Tier 2 corporate average NO_x standard or the phase-in percentage requirements in the Tier 2 program or to generate Tier 2 NO_x credits. More simply, a manufacturer may use the Tier 2 bins for interim non-Tier 2 vehicles; but, in a given model year, an individual vehicle may not be included in both the Tier 2 program and an interim program. Tables S04–8 and S04–9 follow:

TABLE S04–8.—FULL USEFUL LIFE INTERIM EXHAUST MASS EMISSION STANDARDS FOR LDV/LLDTs

[Grams per mile]

EPA Bin No.	NMOG	CO	NO _x	HCHO	PM
5	0.156	4.2	0.60	0.018	0.06
4	0.090	4.2	0.30	0.018	0.06
3	0.055	2.1	0.30	0.011	0.04
2	0.090	4.2	0.07	0.018	0.01
1	0.000	0.0	0.00	0.000	0.0

TABLE S04–9.—INTERMEDIATE USEFUL LIFE INTERIM EXHAUST MASS EMISSION STANDARDS FOR LDV/LLDTs

[Grams per mile]

EPA Bin No.	NMOG	CO	NO _x	HCHO	PM
5	0.125	3.4	0.40	0.015	
4	0.075	3.4	0.20	0.015	
3	0.040	1.7	0.20	0.008	
2	0.075	3.4	0.05	0.015	

(ii) Manufacturers must select a set of standards from the same bin in Table S04–8 of this section and the corresponding bin in Table S04–9, if any, for a given test group of flexible-fueled, dual fuel or multi-fuel LDV/LLDTs, when operated

on the alcohol or gaseous fuel they are designed to use. When these flexible-fueled, dual fuel or multi fuel LDV/Ts are certified to operate on gasoline, the manufacturer may choose to comply with the next numerically higher NMOG standard (if there is one) above the bin which contains the standards selected for certification on the gaseous or alcohol fuel.

(2) *FTP exhaust emission standards for interim non-Tier 2 HLDTs.* (i) HLDTs of model years 2004–2008 that are not certified to meet the Tier 2 FTP exhaust standards in paragraph (c) of this section must comply with the interim non-Tier 2 FTP exhaust emission standards in Tables S04–10 and S04–11 of this section.

(ii) HLDTs of model years 2004–2008 that are not certified to meet the Tier 2 FTP exhaust standards in paragraph (c) of this section must also comply with the fleet average NO_x standard

described in paragraph (l)(3)(ii) of this section subject to the phase-in schedule in paragraph (l)(2)(iv) of this section, i.e. 25 percent of the HLDTs must meet the fleet average standard of 0.20 g/mi in 2004, 50 percent in 2005, and so on.

(iii) Manufacturers may choose the bin of full useful life standards to which they certify a test group of HLDTs, subject to the requirements in paragraph (l)(3)(ii) of this section. In addition to the bins shown in Tables S04–10 and S04–11 of this section, manufacturers may also use the Tier 2 bins shown in

Tables S04–1 and S04–2 of this section. Therefore, manufacturers may include HLDTs in the interim program that are not used to meet the Tier 2 corporate average NO_x standard or the phase-in percentage requirements in the Tier 2 program or to generate Tier 2 NO_x credits. More simply, a manufacturer may use the Tier 2 bins for interim non-Tier 2 vehicles; but, in a given model year, an individual vehicle may not be included in both the Tier 2 program and an interim program. Tables S04–10 and S04–11 follow:

TABLE S04–10.—FULL USEFUL LIFE INTERIM EXHAUST MASS EMISSION STANDARDS FOR HLDTS

[Grams/mile]

EPA Bin No.	NMOG	CO	NO _x	HCHO	PM
5	0.230	4.2	0.60	0.018	0.06
4	0.180	4.2	0.30	0.018	0.06
3	0.156	4.2	0.20	0.018	0.02
2	0.090	4.2	0.07	0.018	0.01
1	0.000	0.0	0.00	0.000	0.0

TABLE S04–11.—INTERMEDIATE USEFUL LIFE INTERIM EXHAUST MASS EMISSION STANDARDS FOR HLDTS

[Grams per mile]

EPA Bin No.	NMOG	CO	NO _x	HCHO	PM
5	0.160	3.4	0.40	0.015	.....
4	0.140	3.4	0.20	0.015	.....
3	0.125	3.4	0.14	0.015	.....
2	0.075	3.4	0.05	0.015	.....

(iv) *Phase-in schedule for interim non-Tier 2 HLDT standards.* Table S04–12 of this section specifies the minimum percentage of the manufacturer's non-Tier 2 HLDT U.S. sales, by model year, that must comply with the fleet average NO_x standard described in paragraph (l)(3)(ii) of this section. Table S04–12 follows:

TABLE S04–12.—PHASE-IN PERCENTAGES FOR INTERIM NON-TIER 2 FLEET AVERAGE NO_x Standard for HLDTs

Model year	Percentage of non-Tier 2 HLDTs that must meet interim non-Tier 2 fleet average NO _x standard
2004	25
2005	50
2006	75
2007 and 2008	100

(v) A manufacturer may elect an alternate phase-in schedule, beginning as early as the 2001 model year, that results in 100% compliance by 2007 with the fleet average NO_x standard for HLDTs described in paragraph (l)(3)(ii) of this section. The requirements of paragraph (k)(6)(i) of this section apply to the selection of an alternate phase-in schedule.

(vi) Manufacturers must select a set of standards from the same bin in Table S04–10 of this section and the corresponding bin in Table S04–11, if any (or Tables S04–1 and S04–2 of this section), for a given test group of flexible-fueled, dual fuel or multi-fuel HLDTs, when operated on the alcohol or gaseous fuel they are designed to use. When these flexible-fueled, dual fuel or multi fuel HLDTs are certified to operate on gasoline, the manufacturer may choose to comply with the next numerically higher NMOG standard (if there is one) above the bin which contains the standards selected for

certification on the gaseous or alcohol fuel.

(3) *Fleet average NO_x standards for interim non-Tier 2 LDV/Ts.* (i) Manufacturers must comply with a fleet average full useful life NO_x standard for their interim non-Tier 2 LDV/LLDTs, on an annual basis, of 0.30 grams per mile.

(ii) Manufacturers must comply with a fleet average full useful life NO_x standard for their interim non-Tier 2 HLDTs, excluding those HLDTs not yet covered by the phase-in requirement described in paragraph (l)(2)(ii) of this section, on an annual basis, of 0.20 grams per mile.

(iii) Manufacturers must determine their compliance with these interim fleet average NO_x standards for each model year by separately computing the sales weighted average NO_x level of all interim non-Tier 2 LDV/LLDTs and all interim non-Tier 2 HLDTs (excluding those not yet phased in as described in paragraph (l)(2)(ii) of this section), using the methodology in § 86.1860.

(iv) Manufacturers may generate, bank, average, trade and use interim non-Tier 2 NO_x credits based on their NO_x fleet average as determined under paragraph (l)(3)(iii) of this section. Unless waived or modified by the Administrator, the provisions of § 86.1861 apply to the generation, banking, averaging, trading and use of credits generated by interim non-Tier 2 LDV/Ts. NO_x credits generated by interim non-Tier 2 LDV/Ts are not subject to any discount.

(m) *NMOG standards for diesel, flexible fueled and dual-fueled LDV/Ts.* (1) For diesel fueled LDV/Ts, the term "NMOG" in both the Tier 2 and interim non-Tier 2 standards means non-methane hydrocarbons.

(2) Flexible-fueled and dual-fuel Tier 2 LDV/Ts and interim non-Tier 2 LDV/Ts must be certified to NMOG exhaust emission standards both for operation on gasoline and on any alternate fuel they are designed to use.

(n) *Hybrid electric vehicle (HEV) and Zero Emission Vehicle (ZEV) requirements.* For FTP and SFTP exhaust emissions, and unless otherwise approved by the Administrator, manufacturers must measure emissions

from all HEVs and ZEVs according to the requirements and test procedures found in the document entitled California Zero-Emission and Hybrid Electric Vehicle Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Passenger Cars, Light-duty Trucks and Medium-duty Vehicles. This document is incorporated by reference (see § 86.1) . Requirements and procedures in this document that are relevant only to complying with the California ZEV mandate, computing partial and full ZEV allowance credits, or generating and using ZEV credits, are not relevant to the federal program and may be disregarded. Discussion in that document relevant to fleet average NMOG standards and NMOG credits may also be disregarded.

(o) *NMOG measurement.* (1) Manufacturers must measure NMOG emissions in accordance with Part G of the California Non-Methane Organic Gas Test Procedures. These requirements are incorporated by reference (see § 86.1).

(2) Manufacturers must not apply reactivity adjustment factors (RAFTs) to NMOG measurements. See § 86.1841.

(p) *In-use standards for Tier 2 LDV/Ts.* (1) Table S04-13 of this section

contains in-use emission standards applicable only to Tier 2 LDV/Ts certified to the bins shown in the table. These standards apply to in-use testing performed by the manufacturer pursuant to regulations at §§ 1845-01, 1845-04 and 1846-01 and to in-use testing performed by EPA. These standards do not apply to certification or Selective Enforcement Auditing.

(2) These standards apply only to Tier 2 LDV/LLDTs produced up through the 2008 model year, and Tier 2 HLDLTs produced up through the 2010 model year. These standards are subject to other limitations described in paragraph (p)(3) of this section.

(3) For the first model year and also for the next model year after that, in which a test group of Tier 2 vehicles is certified to a bin of standards to which it has not previously been certified, the standards in Table S04-13 of this section apply for purposes of in-use testing only. The standards apply equally to Tier 2 LDV/Ts produced before, during and after the applicable Tier 2 phase-in period, subject to the model year limitation in paragraph (p)(2) of this section. Table S04-13 follows:

TABLE S04-13.—IN-USE COMPLIANCE STANDARDS FOR TIER 2 VEHICLES (G/Mi)

[Certification standards shown for reference purposes]

Bin No.	Durability period (miles)	NO _x in-use	NO _x certification	NMOG in-use	NMOG certification
5,4	50,000	0.07	0.05	n/a	0.075, 0.04
5,4	120,000	0.10	0.07	n/a	0.090, 0.055
3	120,000	0.06	0.04	n/a	0.070
2	120,000	0.03	0.02	0.02	0.010

22. Section 86.1812-01 is amended by adding the following sentence to the end of the introductory text to read as follows:

§ 86.1812-01 Emission standards for light-duty trucks 1.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811-04.

* * * * *

23. Section 86.1813-01 is amended by adding the following sentence to the end of the introductory text to read as follows:

§ 86.1813-01 Emission standards for light-duty trucks 2.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811-04.

* * * * *

24. Section 86.1814-02 is amended by adding the following sentence to the end of the introductory text to read as follows:

§ 86.1814-02 Emission standards for light-duty trucks 3.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811-04.

* * * * *

§ 86.1814-04 [Removed]

25. Section 86.1814-04 is removed.

26. Section 86.1815-02 is amended by adding the following sentence to the end of the introductory text to read as follows:

§ 86.1815-02 Emission standards for light-duty trucks 4.

* * * This section does not apply to 2004 and later model year vehicles,

except as specifically referenced by § 86.1811-04.

* * * * *

§ 86.1815-04 [Removed]

27. Section 86.1815-04 is removed.

28. Section 86.1824-01 is amended by adding paragraphs (a)(2)(iii) and (a)(2)(iv) to read as follows:

§ 86.1824-01 Durability demonstration procedures for evaporative emissions.

* * * * *

(a) * * *

(2) * * *

(iii) For gasoline fueled LDV/Ts certified to meet the evaporative emission standards set forth in § 86.1811-04(e)(1), any service accumulation method for evaporative emissions must employ gasoline fuel for the entire service accumulation period which contains ethanol in, at least, the highest concentration permissible in gasoline under federal law and that is

commercially available in any state in the United States. Unless otherwise approved by the Administrator, the manufacturer must determine the appropriate ethanol concentration by selecting the highest legal concentration commercially available during the calendar year before the one in which the manufacturer begins its service accumulation. The manufacturer must also provide information acceptable to the Administrator to indicate that the service accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to the service accumulation fuel constituents.

(iv) For flexible-fueled, dual-fueled, multi-fueled, ethanol-fueled and methanol-fueled LDV/Ts certified to meet the evaporative emission standards set forth in § 86.1811-04(e)(1), any service accumulation method must employ fuel for the entire service accumulation period which the vehicle is designed to use and which the Administrator determines will have the greatest impact upon the permeability of evaporative and fuel system components. The manufacturer must also provide information acceptable to the Administrator to indicate that the service accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to service accumulation fuel constituents.

29. Section 86.1827-01 is amended by adding paragraph (e) to read as follows:

§ 86.1827-01 Test group determination.

(e) Unless otherwise approved by the Administrator, a manufacturer of hybrid electric vehicles must create separate test groups based on both the type of battery technology employed by the HEV and upon features most related to their exhaust emission characteristics.

30. Section 86.1829-01 is amended by adding paragraph (d) to read as follows:

§ 86.1829-01 Durability and emission testing requirements; waivers.

(d)(1) Beginning in the 2004 model year, the exhaust emissions must be measured from all exhaust emission data vehicles tested in accordance with the federal Highway Fuel Economy Test (HWFET; 40 CFR part 600, subpart B). The oxides of nitrogen emissions measured during such tests must be multiplied by the oxides of nitrogen deterioration factor computed in accordance with § 86.1824-01 and

subsequent model year provisions, and then rounded and compared with the applicable emission standard in § 86.1811-04. All data obtained from the testing required under this paragraph (d) must be reported in accordance with the procedures for reporting other exhaust emission data required under this subpart.

(2) In the event that one or more emission data vehicles fail the applicable HWFET standard in § 86.1811-04, the manufacturer may submit to the Administrator engineering data or other evidence showing that the system is capable of complying with the standard. If the Administrator finds, on the basis of an engineering evaluation, that the system can comply with the HWFET standard, he or she may accept the information supplied by the manufacturer in lieu of the test data.

31. Section 86.1837-01 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 86.1837-01 Rounding of emission measurements.

(b) Fleet average NO_x value calculations, where applicable, must be rounded to one more decimal place than that of the applicable fleet average standard before comparing with the applicable fleet average NO_x standard to determine credit generation or credit needs.

32. Section 86.1838-01 is amended by revising paragraph (c)(2)(iii) to read as follows:

§ 86.1838-01 Small volume manufacturer certification procedures.

(iii) The provisions of § 86.1845-01(c)(2) and § 86.1845-04(c)(2) that require one vehicle of each test group during high mileage in-use verification testing to have a minimum odometer mileage of 75 percent of the full useful life mileage for Tier 1 and NLEV LDV/Ts, or 90,000 (or 105,000) miles for Tier 2 and interim non-Tier 2 LDV/Ts, do not apply.

33. Section 86.1840-01 is amended by adding paragraph (c) to read as follows:

§ 86.1840-01 Special test procedures.

(c) Manufacturers of LDV/Ts equipped with periodically regenerating trap oxidizer systems must propose a procedure for testing and certifying such LDV/Ts including SFTP testing for the review and approval of the

Administrator. The manufacturer must submit its proposal before it begins any service accumulation or emission testing. The manufacturer must provide with its submittal, sufficient documentation and data for the Administrator to fully evaluate the operation of the trap oxidizer system and the proposed certification and testing procedure.

34. Section 86.1841-01 is amended by revising paragraph (a)(1)(iii) and adding paragraph (e) to read as follows:

§ 86.1841-01 Compliance with emission standards for the purpose of certification.

(iii) For the SFTP composite standard of NMHC+NO_x, the measured results of NMHC and NO_x must each be adjusted by their corresponding deterioration factors before the composite NMHC+NO_x certification level is calculated. Where the applicable FTP exhaust hydrocarbon emission standard is an NMOG standard, the applicable NMOG deterioration factor must be used in place of the NMHC deterioration factor, unless otherwise approved by the Administrator.

(e) Unless otherwise approved by the Administrator, manufacturers must not use Reactivity Adjustment Factors (RAFTs) in their calculation of the certification levels of any pollutant, regardless of the fuel used in the test vehicle.

35. Section 86.1844-01 is amended by adding a new paragraph (d)(15), a new paragraph (e)(6) and a new paragraph (i) to read as follows:

§ 86.1844-01 Information requirements: Application for certification and submittal of information upon request.

(15) For HEVs, unless otherwise approved by the Administrator, the information required by the "California Zero-Emission and Hybrid Electric Vehicle Standards and Test Procedures for 2003 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-duty Vehicles" must be supplied. These procedures are incorporated by reference (see § 86.1).

(6) The NMOG/NMHC and formaldehyde to NMHC ratios established according to § 86.1845-04.

(i) For exhaust emission testing for Tier 2 and interim non-Tier 2 LDV/Ts, if approved by the Administrator in advance, manufacturers may submit exhaust emission test data generated

under California test procedures to comply with any certification and in-use testing requirements under this subpart. The Administrator may require supporting information to establish that differences between California and Federal exhaust testing procedures and fuels will not produce significant differences in emission results. The Administrator may require that in-use testing be performed using Federal test fuels as specified in § 86.113-04(a)(1).

36. Section 86.1845-04 is amended by redesignating the text of paragraph (a) after the paragraph heading as paragraph (a)(1), adding paragraph (a)(2), revising paragraph (c)(2) and adding paragraph (f) to read as follows:

§ 86.1845-04 Manufacturer in-use verification testing requirements.

(a) *General requirements.* (1) * * *

(2) Unless otherwise approved by the Administrator, no emission measurements made under the requirements of this section may be adjusted by Reactivity Adjustment Factors (RAFs).

* * * * *

(c) * * *

(2) Vehicle mileage:

(i) All test vehicles must have a minimum odometer mileage of 50,000 miles. At least one vehicle of each test group must have a minimum odometer mileage of 75 percent of the full useful life mileage. See § 86.1838-01(c)(2) for small volume manufacturer mileage requirements; or

(ii) For engine families certified for a useful life of 150,000 miles, at least one vehicle must have a minimum odometer mileage of 105,000 miles. See § 86.1838-01(c)(2) for small volume manufacturer mileage requirements.

* * * * *

(f)(1) As an alternative to measuring the NMOG content, the Administrator may approve, upon submission of supporting data by a manufacturer, the use of NMOG to NMHC ratios. To request the use of NMOG to NMHC ratios, a manufacturer must establish during certification testing the ratio of measured NMOG exhaust emissions to measured NMHC exhaust emissions for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator in the Part II application for certification. A manufacturer may conduct in-use testing on the test group by measuring NMHC exhaust emissions rather than NMOG exhaust emissions. After approval by the Administrator, the measured NMHC exhaust emissions must be multiplied by the NMOG to NMHC ratio submitted in the application for certification for the test

group to determine the equivalent NMOG exhaust emission values for the test vehicle. The equivalent NMOG exhaust emission value must be used in place of the measured NMOG exhaust emission value in determining the exhaust NMOG results. The equivalent NMOG exhaust emission values must be compared to the NMOG exhaust emission standard from the emission bin to which the test group was certified.

(2) For flexible-fueled LDV/Ts certified to NMOG standards, the manufacturer may request from the Administrator the use of a methanol (M85) or ethanol (E85) NMOG exhaust emission to gasoline NMHC exhaust emission ratio which must be established during certification for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator in the Part II application for certification. After approval by the Administrator, the measured gasoline NMHC exhaust emissions must be multiplied by the M85 or E85 NMOG to gasoline NMHC ratio submitted in the application for certification for the test group to determine the equivalent NMOG exhaust emission values for the test vehicle. The equivalent NMOG exhaust emission value must be used in place of the measured NMOG exhaust emission value in determining the exhaust NMOG results. The equivalent NMOG exhaust emission values must be compared to the NMOG exhaust emission standard from the vehicle emission standard bin to which the test group was certified.

(3) As an alternative to measuring the HCHO content, the Administrator may approve, upon submission of supporting data by a manufacturer, the use of HCHO to NMHC ratios. To request the use of HCHO to NMHC ratios, the manufacturer must establish during certification testing the ratio of measured HCHO exhaust emissions to measured NMHC exhaust emissions for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator with the Part II application for certification. Following approval of the application for certification, the manufacturer may conduct in-use testing on the test group by measuring NMHC exhaust emissions rather than HCHO exhaust emissions. The measured NMHC exhaust emissions must be multiplied by the HCHO to NMHC ratio submitted in the application for certification for the test group to determine the equivalent HCHO exhaust emission values for the test vehicle. The equivalent HCHO exhaust emission values must be compared to the HCHO exhaust

emission standard applicable to the test group.

37. Section 86.1846-01 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 86.1846-01 Manufacturer in-use confirmatory testing requirements.

(a)(1) * * *

(2) Except for vehicles certified under the NLEV provisions of subpart R of this part or unless otherwise approved by the Administrator, no emission measurements made under the requirements of this section may be adjusted by Reactivity Adjustment Factors (RAFs).

* * * * *

38. Section 86.1848-01 is amended by adding paragraph (c)(7) to read as follows:

§ 86.1848-01 Certification.

* * * * *

(c) * * *

(7) For Tier 2 LDV/Ts and interim non-Tier 2 LDV/Ts, all certificates of conformity issued are conditional upon compliance with all provisions of §§ 86.1811-04, 86.1860-04, 86.1861-04 and 86.1862-04 both during and after model year production.

(i) Failure to meet the fleet average NO_x requirements of 0.07g/mi, 0.30 g/mi or 0.20 g/mi, as applicable, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the LDV/Ts sold in violation of the fleet average NO_x standard will not be covered by the certificate(s).

(ii) Failure to comply fully with the prohibition against selling credits that it has not generated or that are not available, as specified in § 86.1861-04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the LDV/Ts sold in violation of this prohibition will not be covered by the certificate(s).

(iii) Failure to comply fully with the phase-in requirements of § 86.1811-04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the LDV/Ts sold which do not comply with Tier 2 or interim non-Tier 2 requirements, up to the number needed to comply, will not be covered by the certificate(s).

(iv) For paragraphs (c)(7) (i) through (iii) of this section:

(A) The manufacturer must bear the burden of establishing to the satisfaction of the Administrator that the terms and conditions upon which the certificate(s) was (were) issued were satisfied.

(B) For recall and warranty purposes, LDV/Ts not covered by a certificate of conformity will continue to be held to the standards stated or referenced in the certificate that otherwise would have applied to the LDV/Ts

* * * * *

§§ 86.1854 through 86.1859 [Reserved]

39. Sections 86.1854 through 86.1859 are added and reserved.

40. Section 86.1860–04 is added to read as follows:

§ 86.1860–04 How to comply with the Tier 2 and interim non-Tier 2 fleet average NO_x standards.

(a) The fleet average standards referred to in this section are the corporate fleet average standards for FTP exhaust NO_x emissions set forth in: § 86.1811–04(d) for Tier 2 LDV/Ts (0.07 g/mi); § 86.1811–04(l)(3) for interim non-Tier 2 LDV/LLDTs (0.30 g/mi); and, § 86.1811–04(l)(3) for interim non-Tier 2 HLDTs (0.20 g/mi). Unless otherwise indicated in this section, the provisions of this section apply to all three corporate fleet average standards, except that the interim non-Tier 2 fleet average NO_x standards do not apply to a manufacturer whose U.S. LDV/T sales are 100% Tier 2 LDV/Ts.

(b) Each manufacturer must comply with the applicable fleet average NO_x standard, or standards, on a sales weighted average basis, at the end of each model year, using the procedure described in this section.

(c)(1)(i) Each manufacturer must separately compute the sales weighted averages of the individual NO_x emission standards to which it certified all its Tier 2 LDV/Ts, interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 HLDTs of a given model year as described in § 86.1804(l)(2). The averages must be rounded to the same number of decimal places as those of the standard plus one additional decimal place.

(ii) For model years up to and including 2008, manufacturers must compute separate NO_x fleet averages for Tier 2 LDV/LLDTs and Tier 2 HLDTs.

(2)(i) For model years up to and including 2008, if a manufacturer certifies its entire U.S. sales of Tier 2 or interim non-Tier 2 LDV/LLDTs or interim non-Tier 2 HLDTs, to full useful life bins having NO_x standards at or below the applicable fleet average NO_x standard, that manufacturer may elect not to compute a fleet average NO_x level for that category of vehicles. A manufacturer making such an election must not generate NO_x credits for that category of vehicles for that model year.

(ii) For model years after 2008, if a manufacturer certifies its entire U.S. sales of Tier 2 vehicles to full useful life bins having NO_x standards at or below 0.07 gpm, that manufacturer may elect not to compute a fleet average NO_x level for its Tier 2 vehicles. A manufacturer making such an election must not generate NO_x credits for that model year.

(d) The sales weighted NO_x fleet averages determined pursuant to paragraph (c) of this section must be compared with the applicable fleet average standard; 0.07 g/mi for NO_x for Tier 2 LDV/Ts, 0.30 g/mi for NO_x for interim non-Tier 2 LDV/LLDTs, and 0.20 g/mi for NO_x for interim non-Tier 2 HLDTs. Each manufacturer must comply on an annual basis with the fleet average standards by:

(1) showing that its sales weighted average NO_x emissions of its LDV/LLDTs, HLDTs or LDV/Ts, as applicable, are at or below the applicable fleet average standard; or

(2) if the sales weighted average is not at or below the applicable fleet average standard, obtaining and applying sufficient Tier 2 NO_x credits, interim non-Tier 2 LDV/LLDT NO_x credits or interim non-Tier 2 HLDT NO_x credits as permitted under § 86.1861–04 of this part. Manufacturers may not use NMOG credits generated under the NLEV program in subpart R of this part to meet any Tier 2 or interim non-Tier 2 NO_x fleet average standard. Tier 2 NO_x credits may not be used to meet any fleet average interim non-Tier 2 NO_x

standard. Interim non-Tier 2 NO_x credits may not be used to meet the Tier 2 corporate average NO_x standard. Interim non-Tier 2 NO_x credits from HLDTs may not be used to meet the fleet average NO_x standard for interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 credits from LDV/LLDTs may not be used to meet the fleet average NO_x standard for interim non-Tier 2 HLDTs.

(e) Manufacturers that can not meet the requirements of paragraph (d) of this section, may carry forward a credit deficit for one model year, but may not carry a deficit forward in two consecutive model years, except that manufacturers may carry forward a credit deficit for interim non-Tier 2 LDV/LLDTs or interim non-Tier 2 HLDTs for more than one year but must cover the LDV/LLDT credit deficit with interim non-Tier 2 LDV/LLDT NO_x credits by the end of model year 2006, and any interim non-Tier 2 HLDT deficit with interim non-Tier 2 HLDT NO_x credits by the end of model year 2008. No deficit from interim non-Tier 2 LDV/LLDTs of any model year may be carried forward into the 2007 model year. No deficit from interim non-Tier 2 HLDTs may be carried forward into the 2009 model year.

(f) *Computing fleet average NO_x emissions.* (1) Manufacturers must separately compute these fleet NO_x averages using the equation contained in paragraph (f)(2) of this section:

(i) Their Tier 2 LDV/LLDT and Tier 2 HLDT fleet average NO_x emissions for each model year through 2008;

(ii) Their Tier 2 LDV/T fleet average NO_x emissions for each model year after 2008;

(iii) Their interim non-Tier 2 LDV/LLDT fleet average NO_x emissions for each model year through 2006; and

(iv) Their interim non-Tier 2 HLDT fleet average NO_x emissions for each model year through 2008.

(2) The equation for computing fleet average NO_x emissions is as follows:

$$\frac{\sum (N \times \text{NO}_x \text{ emission standard})}{\text{Total number of LDV/Ts sold including HEVs and ZEVs}}$$

Where:

N = The number of LDV/Ts sold in the applicable category that were certified for each corresponding NO_x emission bin. N must be based on LDV/Ts counted to the point of first sale.

Emission standard = The individual full useful life NO_x emission standard

for each bin for which the manufacturer had sales.

(3) The results of the calculation in paragraph (f)(2) of this section must be rounded to one more decimal place than the number of decimal places of the fleet average NO_x standard.

(4) When approved in advance by the Administrator, the numerator in the equation in paragraph (f)(2) of this section may be adjusted downward by the product of the number of HEVs from each NO_x emission bin times a HEV NO_x contribution factor determined through mathematical estimation of the reduction in NO_x emissions over the

test procedure used to certify the HEVs. The reduction in NO_x emissions must be determined using good engineering judgement and reflect the relation in actual full useful life NO_x emissions to the full useful life NO_x standards for the certification bin applicable to the LDV/Ts. The Administrator may require that calculation of the HEV NO_x contribution factor include vehicle parameters such as vehicle weight, portion of time during the test procedure that the HEV operates with zero exhaust emissions, zero emission range, NO_x emissions from fuel-fired heaters and NO_x emissions from electricity production and storage.

(g) Additional credits for LDV/Ts certified to 150,000 mile useful lives. A manufacturer may certify any Tier 2 test group to an optional useful life of 150,000 miles. For any test group certified to the optional 150,000 mile useful life, the manufacturer, when calculating its fleet average by the procedure in paragraph (f) of this section, may substitute an adjusted NO_x standard for the applicable NO_x standards from the full useful life certification bin. The adjusted standard must be equal to the applicable full useful life NO_x standard multiplied by 0.85 and rounded to the same number of decimal places as the applicable full useful life NO_x standard.

41. Section 86.1861-04 is added to read as follows:

§ 86.1861-04 How do the Tier 2 and interim non-Tier 2 NO_x averaging, banking and trading programs work?

(a) *General provisions for Tier 2 credits and debits.* (1) A manufacturer whose Tier 2 fleet average NO_x emissions exceeds the 0.07 g/mile standard must complete the calculation at paragraph (b) of this section to determine the size of its NO_x credit deficit. A manufacturer whose Tier 2 fleet average NO_x emissions is less than or equal to the 0.07 g/mile standard must complete the calculation in paragraph (b) of this section if it desires to generate NO_x credits. In either case, the number of credits or debits determined in the calculation at paragraph (b) of this section must be rounded to the nearest whole number.

(2) Credits generated according to the calculation in paragraph (b)(1) of this section may be banked for future use or traded to another manufacturer.

(3) NO_x credits are not subject to any discount or expiration date.

(4) If a manufacturer calculates that it has negative credits (debits or a credit deficit) for a given model year, it must obtain sufficient credits from LDV/Ts produced by itself or another

manufacturer in a model year no later than the one following the model year for which it calculated the credit deficit. (*Example:* if a manufacturer calculates that it has a NO_x credit deficit for the 2008 model year, it must obtain sufficient NO_x credits to offset that deficit from its own production or that of other manufacturers' 2009 or earlier model year LDV/Ts.)

(5) A manufacturer must not have a NO_x credit deficit for any two consecutive model years. (*Example:* A manufacturer that has a NO_x credit deficit at the end of the 2008 model year from its 2008 production that it can not offset with NO_x credits from 2008 or earlier model year LDV/Ts as allowed under this subpart, must not also have a NO_x credit deficit at the end of the 2009 model year.)

(6) Manufacturers may not use NO_x credits generated in the Tier 2 program to comply with the NLEV requirements of subpart R of this part. Manufacturers may not use NMOG credits generated by vehicles certified to the NLEV requirements of subpart R of this part to comply with any NO_x requirements of this subpart. Manufacturers may not use NO_x credits generated by interim non-Tier 2 LDV/Ts to comply with the corporate average NO_x standard for Tier 2 LDV/Ts. Manufacturers may not use NO_x credits generated by Tier 2 LDV/Ts to comply with any corporate average NO_x standard for interim non-Tier 2 LDV/Ts. Manufacturers may not use NO_x credits generated by interim non-Tier 2 LDV/LLDTs to comply with the corporate average NO_x standard for interim non-Tier 2 HLDTs.

Manufacturers may not use NO_x credits generated by interim non-Tier 2 HLDTs to comply with the corporate average NO_x standard for interim non-Tier 2 LDV/LLDTs.

(7) Manufacturers may bank Tier 2 NO_x credits for later use to meet the Tier 2 corporate average NO_x standard or trade them to another manufacturer. Credits are earned on the last day of the model year. Before trading or carrying over credits to the next model year, a manufacturer must apply available credits to offset any credit deficit, where the deadline to offset that credit deficit has not yet passed.

(8) There are no property rights associated with NO_x credits generated under this subpart. Credits are a limited authorization to emit the designated amount of emissions. Nothing in this part or any other provision of law should be construed to limit EPA's authority to terminate or limit this authorization through a rulemaking.

(b) *Calculating Tier 2 credits and debits.* (1) Manufacturers that achieve

fleet average NO_x values from the calculation in § 86.1860-04(f), lower than the applicable fleet average NO_x standard, may generate credits for a given model year, in units of vehicle-g/mi NO_x, determined in this equation:

$$[(\text{Fleet Average NO}_x \text{ Standard}) - (\text{Manufacturer's Fleet Average NO}_x \text{ Value})] \times (\text{Total number of Tier 2 LDV/Ts Sold, Including ZEVs and HEVs})$$

Where: The number of Tier 2 LDV/Ts sold is based on the point of first sale and does not include vehicles sold in California or a state that adopts, and has in effect for that model year, California emission requirements.

(2) Where the result of the calculation in paragraph (b)(1) of this section is a negative number, the manufacturer must generate negative NO_x credits (debits).

(c) *Early banking.* (1)(i) Manufacturers may certify LDV/LLDTs to the Tier 2 FTP exhaust standards in § 86.1811-04 for model years 2001-2003 in order to bank credits for use in the 2004 and later model years. Such vehicles must also meet SFTP exhaust emission standards specified in § 86.1811-04.

(ii) Manufacturers may certify HLDTs to the Tier 2 FTP exhaust standards in § 86.1811-04 for model years 2004-2007 in order to bank credits for use in the 2008 and later model years. Such vehicles must also meet SFTP exhaust emission standards specified in § 86.1811-04.

(iii) This process is referred to as "early banking" and the resultant credits are referred to as "early credits". In order to bank early credits, a manufacturer must comply with all exhaust emission standards and requirements applicable to Tier 2 LDV/LLDTs and/or HLDTs, as applicable, except as allowed under paragraph (c)(4) of this section.

(2) To generate early credits, a manufacturer must separately compute the sales weighted NO_x average of the LDV/LLDTs and HLDTs it certifies to the Tier 2 exhaust requirements and separately compute credits using the calculations in this section and in § 86.1860-04.

(3) Early HLDT credits may not be applied to LDV/LLDTs before the 2009 model year. Early LDV/LLDT credits may not be applied to HLDTs before the 2009 model year.

(4) Manufacturers may generate early Tier 2 credits from LDVs, LDT1s and LDT2s that are certified to a full useful life of 100,000 miles, provided that the credits are prorated by a multiplicative factor of 0.833 (the quotient of 100,000/120,000). Where a manufacturer has

both 100,000 and 120,000 mile full useful life vehicles for which it desires to bank early credits, it must compute the credits from each group of vehicles separately and then add them together.

(5) Manufacturers may bank early credits for later use to meet the Tier 2 corporate average NO_x standard or trade them to another manufacturer subject to the restriction in paragraph (c)(3) of this section.

(6) Early credits may not be used to comply with the corporate average NO_x standards for interim non-Tier 2 LDV/Ts.

(d) *Reporting and recordkeeping for Tier 2 NO_x credits* including early credits. Each manufacturer must comply with the reporting and recordkeeping requirements of § 86.1862-04.

(e) *Fleet average NO_x debits.* (1) Manufacturers must offset any debits for a given model year by the fleet average NO_x reporting deadline for the model year following the model year in which the debits were generated. Manufacturers may offset debits by generating credits or acquiring credits generated by another manufacturer.

(2)(i) Failure to meet the requirements of paragraphs (a) through (d) of this section within the required timeframe for offsetting debits will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual noncomplying LDV/Ts not covered by the certificate must be determined according to this section.

(ii) If debits are not offset within the specified time period, the number of LDV/Ts not meeting the fleet average NO_x standards and not covered by the certificate must be calculated by dividing the total amount of debits for the model year by the fleet average NO_x standard applicable for the model year in which the debits were first incurred.

(iii) EPA will determine the LDV/Ts for which the condition on the certificate was not satisfied by designating LDV/Ts in those engine families with the highest certification NO_x emission values first and continuing until a number of LDV/Ts equal to the calculated number of noncomplying LDV/Ts as determined above is reached. If this calculation determines that only a portion of LDV/Ts in an engine family contribute to the debit situation, then EPA will designate actual LDV/Ts in that engine family as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(3) If a manufacturer ceases production of LDV/Ts or is purchased by, merges with or otherwise combines with another manufacturer, the manufacturer continues to be

responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered to be a violation of paragraph (e)(1) of this section and may subject the manufacturer to an enforcement action for sale of LDV/Ts not covered by a certificate, pursuant to paragraph (e)(2) of this section.

(4) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (e)(1) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of LDV/Ts not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (e)(1) of this section.

(f) *NO_x credit transfers.* (1) EPA may reject NO_x credit transfers if the involved manufacturers fail to submit the credit transfer notification in the annual report.

(2) A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (a)(2) and (a)(7) of this section.

(3) In the event of a negative credit balance resulting from a transaction, both the buyer and seller are liable, except in cases involving fraud. EPA may void *ab initio* the certificates of conformity of all engine families participating in such a trade.

(4)(i) If a manufacturer transfers a credit that it has not generated pursuant to paragraph (b) of this section or acquired from another party, the manufacturer will be considered to have generated a debit in the model year that the manufacturer transferred the credit. The manufacturer must offset such debits by the deadline for the annual report for that same model year.

(ii) Failure to offset the debits within the required time period will be considered a failure to satisfy the conditions upon which the certificate(s) was issued and will be addressed pursuant to paragraph (e) of this section.

(g) *Interim non-Tier 2 NO_x credits and debits; Interim non-Tier 2 averaging, banking and trading.* Interim non-Tier 2 NO_x credits must be generated, calculated, tracked, averaged, banked, traded, accounted for and reported upon separately from Tier 2 credits. The provisions of this section applicable to Tier 2 NO_x credits and debits and Tier 2 averaging banking and trading are applicable to interim non-Tier 2 LDV/Ts with the following exceptions:

(1) Provisions for early banking under paragraph (c) of this section do not apply.

(2) The fleet average NO_x standard used for calculating credits is 0.30 grams per mile for interim non-Tier 2

LDV/LLDTs and 0.20 g/mi for interim non-Tier 2 HLDTs. (The interim non-Tier 2 NO_x standard of 0.30 (or 0.20) g/mi replaces 0.07 in the text and calculation in this section.)

(3) Interim non-Tier 2 NO_x credit deficits may be carried forward for more than one year, except that all credit deficits must be reduced to zero for interim non-Tier 2 LDV/LLDTs by the end of the 2006 model year, and by the end of the 2008 model year for interim non-Tier 2 HLDTs.

42. Section 86.1862-04 is added to read as follows:

§ 86.1862-04 Maintenance of records and submittal of information relevant to compliance with fleet average NO_x standards.

(a) *Maintenance of records.* (1) The manufacturer producing any light-duty vehicles and/or light-duty trucks subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each model year:

(i) Model year;

(ii) Applicable fleet average NO_x standard: 0.07g/mi for Tier 2 LDV/Ts; 0.30 g/mi for interim non-Tier 2 LDV/LLDTs; or 0.20 g/mi for interim non-Tier 2 HLDTs;

(iii) Fleet average NO_x value achieved; and

(iv) All values used in calculating the fleet average NO_x value achieved.

(2) The manufacturer producing any LDV/Ts subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each LDV/T subject to this subpart:

(i) Model year;

(ii) Applicable fleet average NO_x standard;

(iii) EPA test group;

(iv) Assembly plant;

(v) Vehicle identification number;

(vi) NO_x standard to which the LDV/T is certified; and

(vii) Information on the point of first sale, including the purchaser, city, and state.

(3) The manufacturer must retain all records required to be maintained under this section for a period of eight years from the due date for the annual report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion to require the

manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(6) EPA may void *ab initio* a certificate of conformity for a LDV/T certified to emission standards as set forth or otherwise referenced in this subpart for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) *Reporting.* (1) Each covered manufacturer must submit an annual report. Except as provided in paragraph (b)(2) of this section, the annual report must contain, for each applicable fleet average NO_x standard, the fleet average NO_x value achieved, all values required to calculate the NO_x value, the number of credits generated or debits incurred, and all the values required to calculate the credits or debits. The annual report must contain the resulting balance of credits or debits.

(2) When a manufacturer calculates compliance with the fleet average NO_x standard using the provisions in § 86.1860-04(c)(2), then the annual report must state that the manufacturer has elected to use such provision and must contain the fleet average NO_x standard as the fleet average NO_x value for that model year.

(3) For each applicable fleet average NO_x standard, the annual report must also include documentation on all credit transactions the manufacturer has engaged in since those included in the last report. Information for each transaction must include:

- (i) Name of credit provider;
 - (ii) Name of credit recipient;
 - (iii) Date the transfer occurred;
 - (iv) Quantity of credits transferred;
- and
- (v) Model year in which the credits were earned.

(4) Unless a manufacturer reports the data required by this section in the annual production report required under § 86.1844-01(e) and subsequent model year provisions, a manufacturer must submit an annual report for each model year after production ends for all affected vehicles and trucks produced by the manufacturer subject to the provisions of this subpart and no later than May 1 of the calendar year following the given model year. Annual reports must be submitted to: Director, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105.

(5) Failure by a manufacturer to submit the annual report in the specified time period for all vehicles and trucks subject to the provisions in this section is a violation of section 203(a)(1) of the Clean Air Act for each subject vehicle and truck produced by that manufacturer.

(6) If EPA or the manufacturer determines that a reporting error occurred on an annual report previously submitted to EPA, the manufacturer's credit or debit calculations will be recalculated. EPA may void erroneous credits, unless transferred, and must adjust erroneous debits. In the case of transferred erroneous credits, EPA must adjust the manufacturer's credit or debit balance to reflect the sale of such credits and any resulting generation of debits.

(c) *Notice of opportunity for hearing.* Any voiding of the certificate under paragraph (a)(6) of this section will be made only after EPA has offered the manufacturer concerned an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or § 86.1014 for light-duty trucks and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

[FR Doc. 99-11384 Filed 5-6-99; 11:03 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS-FRL-6337-4]

RIN 2060-AI32

Control of Diesel Fuel Quality

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Diesel engines used in motor vehicles and nonroad equipment are a major source of nitrogen oxides and particulate matter, both of which contribute to serious health problems in the United States. We are considering setting new quality requirements for fuel used in diesel engines, in order to bring about large environmental benefits through the enabling of a new generation of diesel emission control technologies.

Because the pursuit of diesel fuel quality changes would be a major undertaking for the Agency and affected industries, and because of the many unresolved issues involved, we are publishing this advance notice to summarize the issues, with the goal of

helping you to better inform us as we consider how to proceed. To aid this process, we have grouped key questions under issue topic headings that are numbered sequentially throughout this notice.

Although this advance notice solicits comment on all potentially beneficial diesel fuel quality changes, we believe that the most promising change would be fuel desulfurization for the purpose of enabling new engine and aftertreatment technologies that, although highly effective, are sensitive to sulfur.

DATES: You should submit written comments on this advance notice by June 28, 1999.

ADDRESSES: You may submit written comments in paper form and/or by E-mail. To ensure their consideration, all comments must be submitted to us by the date indicated under **DATES** above. Paper copies of comments should be submitted (in duplicate if possible) to Public Docket No. A-99-06 at the following address: U.S. Environmental Protection Agency, Air Docket Section, Room M-1500, 401 M Street, SW, Washington, DC 20460. We request that you also send a separate copy to the contact person listed below. Those submitting a paper copy of their comments are also encouraged to submit an electronic copy (in ASCII format) by E-mail to "A-and-R-Docket@epa.gov", or on a 3.5 inch diskette. You may also submit comments by E-mail to the docket at the address listed above (with a copy to the contact person listed below) without the submission of a paper copy. However, we encourage you to send a paper copy as well to ensure the clarity of your submission.

Materials related to this rulemaking are available for review at EPA's Air Docket at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. The telephone number for EPA's Air Docket is (202) 260-7548, and the facsimile number is (202) 260-4400. A reasonable fee may be charged by EPA for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214-4349, FAX (734) 214-4050, E-mail connell.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Why Is EPA Considering Diesel Fuel Changes?
- II. Diesel Engines and Air Quality

- III. Diesel Emissions Control: Progress and Prospects
- IV. What Fuel Changes Might Help?
- V. Diesel Fuel Quality in the U.S. and Other Countries
- VI. Potential Benefits of Reducing Sulfur
- VII. Diesel Sulfur Control and Tier 2
- VIII. Heavy-Duty Highway Engines
- IX. Nonroad Engines
- X. Refinery Impacts and Costs
- XI. Prospects For A Phased Approach
- XII. Vehicle Operation With Higher Sulfur Fuel
- XIII. Stakeholder Positions
- XIV. Public Participation
- XV. Administrative Designation and Regulatory Analysis
- XVI. Statutory Provisions and Legal Authority

I. Why Is EPA Considering Diesel Fuel Changes?

Diesel engines contribute greatly to a number of serious air pollution problems, especially the health and welfare effects of ozone and particulate matter (PM).¹ Millions of Americans live in areas that exceed the national air quality standards for ozone or PM. As discussed in detail in the following section, diesel emissions account for a large portion of the country's PM and nitrogen oxides (NO_x), a key precursor to ozone formation. By 2010, we estimate that diesel engines will account for more than one-half of mobile source NO_x emissions, and nearly 70% of mobile source PM emissions (not taking into account emission reductions from proposed Tier 2 emission standards for light-duty vehicles and trucks, discussed below).

Diesel emissions in this country come mostly from heavy-duty trucks and nonroad equipment, but a potentially large additional source may grow out of auto manufacturers' plans to greatly increase the sales of diesel-powered light-duty vehicles (LDVs) and especially of light-duty trucks (LDTs), a category that includes the fast-selling sport-utility vehicles, minivans, and pickup trucks. These plans will be greatly affected by our own plans to adopt stringent new emission standards for these light-duty highway vehicles (referred to as "Tier 2" standards) that we have proposed to phase in between 2004 and 2009. A key approach taken in developing the Tier 2 standards has been "fuel-neutrality"—applying standards equally to diesel- and gasoline-powered vehicles. As a result, the proposed Tier 2 NO_x and PM standards are far more challenging for diesel engine designers than the most

stringent heavy-duty engine standards promulgated to date.

We have proposed Tier 2 standards concurrent with a proposal to reduce the sulfur content of gasoline, in part because gasoline sulfur reduction will enable advanced catalyst technologies needed to achieve the new standards. With this advance notice, we are seeking comment on the merits of improving the quality of diesel fuel as well, as an enabler of advanced technologies for diesel emission control, without which diesel vehicles may not be able to meet Tier 2 standards. These advanced sulfur-sensitive technologies have the potential to reduce diesel engine NO_x emissions by up to 75% and PM emissions by 80% or more.

Thus this potential action on diesel fuel is, like gasoline sulfur control, closely tied to our Tier 2 standard-setting activity. Decisions on diesel fuel quality need to be made quickly so that the Tier 2 program may be implemented in the most coordinated and cost-effective manner. We therefore plan to pursue this action on an accelerated schedule. If, following this advance notice, we decide that a proposal is warranted, we plan to publish a notice of proposed rulemaking later this year, and a final rule as soon as possible after that.

Although the impetus for near-term action on diesel fuel quality comes from our efforts to set fuel-neutral Tier 2 standards for the light-duty market, any emissions control technologies that prove effective in light-duty diesel applications are likely to be effective with heavy-duty highway engines as well. Thus higher quality diesel fuel for heavy-duty applications, combined with more stringent heavy-duty engine emission standards that effectively introduce the new technologies, could provide large environmental benefits, though perhaps on a different implementation schedule than that required for the light-duty program. This might take the form of a phased in program, involving a regulated grade of premium fuel that is initially focused on servicing the light-duty diesel fleet, but that gradually widens its market penetration to fulfill the expanding need created by sales of new heavy-duty vehicles that also employ the advanced technologies. Various possibilities and issues associated with such an approach are discussed in detail below in this notice. In addition to enabling new control technologies, the use of higher quality diesel fuel is likely to improve the emissions performance of the existing fleet of diesel engines as well, as explained below.

Eventually these advanced technologies could also find application in nonroad equipment, although implementation timing would have to consider a number of special challenges in controlling nonroad engine emissions, including the fact that current nonroad diesel fuel is unregulated and has much higher sulfur levels than highway fuel. It may also be necessary to regulate nonroad diesel fuel in an earlier time frame, to a quality level similar to that of current highway fuel (which has sulfur levels capped at 500 parts per million (ppm)), in order to provide for the transfer of advanced highway engine technologies already under development for use with that fuel. This technology transfer is expected to play an important role in the implementation of the recently promulgated Tier 3 nonroad diesel engine emission standards, and of the stringent PM standards planned for promulgation in 2001. (The 2001 rulemaking will also review the feasibility of the recently promulgated Tier 3 standards, and may amend them if appropriate.)

II. Diesel Engines and Air Quality

The diesel engine is increasingly becoming a vital workhorse in the United States, moving much of the nation's freight, and carrying out much of its farm, construction, and other labor. Every year, about a million new diesel engines are put to work in the U.S., and as their utility continues to grow, so too does their annual fuel consumption, now over 40 billion gallons. However, the societal benefits provided by the diesel engine have come at a price—diesels emit millions of tons of harmful exhaust pollutants annually.

Compounding our concerns over emissions from applications in which diesels are currently prevalent, we are aware that manufacturers are considering the introduction of a new generation of diesel engines for use in light-duty highway vehicles. Even at modest projected sales ramp-up rates, this introduction could greatly increase the number of diesel engines in operation over the next several years.

Although in the past much of our attention in addressing the diesel pollution problem has focused on engine design, the role of fuel formulation has been recognized from the beginning. A number of fuel properties and constituents can be varied in the refinery process with varying effects on emissions. Furthermore, some advanced emission control technologies may be degraded by constituents in diesel fuel, even to

¹ In this notice, the term "diesel engine" generally refers to diesel-fueled engines, rather than to engines operating on the diesel combustion cycle, some of which use alternative fuels, such as methanol or natural gas, instead of diesel fuel.

the extent of precluding the use of these technologies.

Diesel engines are large contributors to a number of serious air pollution problems, particularly the health and welfare effects caused by ozone and particulate matter. The particulate from diesel exhaust also is thought to pose a potential cancer risk. These concerns for cancer risk and other adverse health effects are discussed in detail below, followed by a discussion of diesel contributions to emissions inventories.

A. Ozone and Particulate Matter

Ground-level ozone, the main ingredient in smog, is formed when volatile organic compounds (VOC) and NO_x react in the presence of sunlight, usually during hot summer weather. Motor vehicles are significant sources of both VOC and NO_x. Diesel engines, in particular, are significant sources of NO_x emissions. Power plants and other combustion sources also are large emitters of NO_x. VOCs are emitted from a variety of sources, including chemical plants, refineries and other industries, consumer and commercial products, and natural sources such as vegetation.

Particulate matter is the term for a mixture of solid particles and liquid droplets found in the air. Particulate matter is distinguished between "coarse" particles (larger than 2.5 microns) and "fine" particles (smaller than 2.5 microns). Coarse particles generally come from vehicles driven on unpaved roads, materials handling, windblown dust, and crushing and grinding operations. Fine particles result from sources such as fuel combustion (from motor vehicles, power plants and industrial facilities), wood stoves and fireplaces. Fine particles also are formed in the atmosphere from gases such as sulfur dioxide, NO_x and VOC. Particles directly emitted from motor vehicles, including diesel engines, and those formed by motor vehicle gaseous emissions, are in the fine particle range.

Ozone can cause acute respiratory problems, aggravate asthma, cause inflammation in lung tissue, and impair the body's immune system defenses. Particulate matter, especially fine particles, has been linked with a series of significant health problems, including premature death, aggravated asthma, acute respiratory symptoms, chronic bronchitis, and shortness of breath. Furthermore, the particulate matter from diesel engines is thought to pose a potential cancer risk, as discussed in the next section. Fine particles can easily reach the deepest recesses of the lungs. Inhalation of ozone and particulate matter has been associated with increased hospital

admissions and emergency room visits. With both ozone and particulate matter, those most at risk are children and people with preexisting health problems, especially asthmatics. Because children's respiratory systems are still developing, they are more susceptible to environmental threats than healthy adults. The elderly also are more at risk from exposure to fine particles, especially those already suffering from heart or lung disease.

In addition to serious public health problems, ozone and particulate matter cause a number of environmental and welfare effects. Fine particles are a major cause of visibility impairment in many of our most treasured national parks and wilderness areas, and many urban areas.² Particulate matter also can damage plants and materials such as monuments and statues. Ozone adversely affects crop yield, vegetation and forest growth, and the durability of materials. By weakening sensitive vegetation, ozone makes plants more susceptible to disease, insect attack, harsh weather and other environmental stresses. NO_x itself, one of the key precursors to ozone, contributes to fish kills and algae blooms in the Chesapeake Bay and other sensitive watersheds.

Despite continued improvements in recent years, ozone remains a serious air pollution problem in much of the country. Approximately 48 million people live in the 77 counties where ozone levels exceeded the 1-hour National Ambient Air Quality Standard (NAAQS) in 1997. Moreover, EPA has established a new and more stringent 8-hour ozone standard to better protect Americans from the health and welfare effects associated with longer term exposures to ozone. Ozone and its precursors can be transported into an area from pollution sources found hundreds of miles upwind, resulting in high ozone levels even in areas with relatively low NO_x and VOC emissions. In one of the most significant actions underway to help ensure that many areas of the country are able to attain the new 8-hour ozone standard, EPA is

²The relative contribution of different particle constituents to visibility impairment varies geographically. For example, in most areas of the eastern U.S., sulfates account for more than 60 percent of annual average light extinction, and nitrates, organic carbon, and elemental carbon account for between 10–15 percent of light extinction. In the rural West, sulfates typically account for about 25–40 percent of light extinction, except in certain areas such as the Cascades of Oregon, where sulfates account for over 50 percent of light extinction. For further discussion of the contribution of different particle constituents to visibility impairment, see EPA's "National Air Quality and Emissions Trends Report, 1997," Chapter 6 (<http://www.epa.gov/oar/aqtrnd97>).

requiring 22 eastern states and the District of Columbia to significantly reduce NO_x emissions from power plants.³ Yet, even after these significant NO_x emission reductions are achieved, we project that by 2007 approximately 28 metropolitan areas and four rural counties, with a combined population of 80 million people, still will not meet the 8-hour ozone standard, and at least eight metropolitan areas and two rural counties with a combined population of 39 million will exceed the 1-hour ozone standard.⁴ The extent of remaining projected ozone nonattainment emphasizes the persistent nature of the ozone air quality problem across much of the country and demonstrates the need for further substantial reductions in ozone's precursors, NO_x and VOC.

In addition to widespread ozone nonattainment, particulate matter continues to be a significant air quality problem. In 1997, 8 million Americans lived in 13 counties that exceeded the air quality standard for particulate matter less than 10 microns in size (PM₁₀). We project that by 2010, 11 counties, with a combined population of about 10 million people, will be in nonattainment for the revised PM₁₀ standard.⁵ We also have established a new air quality standard for fine particles (PM_{2.5}). Monitoring data to determine nonattainment of the new PM_{2.5} standard is not yet available. However, we project that by 2010, 102 counties, with a combined population of 55 million people, will violate the PM_{2.5} air quality standard.⁶

With the significant number of areas projected to exceed the PM₁₀ NAAQS in 2010, further particulate emission reductions appear to be needed. Because most of the particulate matter emissions from diesel engines are fine particles, any particulate emission reduction aimed at reducing PM₁₀ levels would also reduce ambient PM_{2.5} levels.

³See 63 FR 57356, October 27, 1998, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone". This action is known as the "NO_x SIP Call".

⁴For a full description of this analysis, see "Draft Regulatory Impact Analysis—Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control Requirements," Chapter III.B.; (EPA420-R-99-002); hereafter referred to as "Tier 2/Gasoline Sulfur Draft RIA" (EPA Docket A-97-10).

⁵Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, N.C., July 16, 1997.

⁶More information about this analysis may be found in the Tier 2 Notice of Proposed Rulemaking preamble and the Tier 2/Gasoline Sulfur Draft RIA.

B. Air Toxics

Diesel exhaust PM typically consists of a solid core, composed mainly of elemental carbon, which has a coating of various organic and inorganic compounds. The diameter of diesel particles is very small with typically 75–95 percent of the particle mass having a diameter smaller than 1.0 μm . The characteristically small particle size increases the likelihood that the particles and the attached compounds will reach and lodge in the deepest and more sensitive areas of the human lung. Both the diesel particle and the attached compounds may be influential in contributing to a potential for human health hazard from long term exposure.

EPA's draft Diesel Health Assessment identifies lung cancer as well as several other adverse respiratory health effects, including respiratory tract irritation, immunological changes, and changes in lung function, as possible concerns for long term exposure to diesel exhaust. The evidence in both cases comes from the studies involving occupational exposures and/or high exposure animal studies; the Health Assessment, when completed, will recommend how the data should be interpreted for lower environmental levels of exposure. The draft Health Assessment is currently being revised to address comments from a peer review panel of the Clean Air Science Advisory Committee.

The California Air Resources Board has identified diesel exhaust PM as a "toxic air contaminant" under the state's air toxics program, based on the information available on cancer and non-cancer health effects.⁷ California is in the process of determining the need for, and appropriate degree of, control measures for diesel exhaust PM. Note that California limited its finding to diesel PM, as opposed to diesel exhaust. EPA's assessment activities of diesel exhaust PM are coincident with, but independent from, California's evaluation.

The concerns for cancer risk and other adverse health effects from exposure to diesel PM are heightened by the potential expansion of diesels in the light-duty vehicle fleet. Diesel engines

are used in a relatively small number of cars and light-duty trucks today. By far, heavy-duty highway and nonroad diesel engines are the larger sources of diesel PM. However, vehicle and engine manufacturers project that diesel engines likely will be used in an increasing share of the light-duty fleet, particularly light-duty trucks. If these projections prove accurate, the potential health risks from diesel PM could increase substantially. EPA's proposed emission standard for PM under the Tier 2 program would limit any increase in potential cancer risks associated with the potential increase in light-duty diesel sales.

C. Diesel Contribution to Emission Inventories

The diesel engine pollutants of most concern are NO_x and PM. Nitrogen and oxygen in the engine's intake air react together in the combustion chamber at high temperatures to form NO_x. Particulate emissions result from incomplete evaporation and burning of the fine fuel droplets which are injected into the combustion chamber, as well as small amounts of lubricating oil that enter the combustion chamber. The VOC emissions from diesel engines are inherently low, because the fuel burns in the presence of excess oxygen which tends to completely burn hydrocarbons.⁸ Evaporative emissions also are insignificant due to the low evaporative rate of diesel fuel.

Diesel engines make up a significant portion of the NO_x and PM from mobile sources. Moreover, the contribution of diesel engines to air pollutant emission inventories is expected to grow as more light-duty diesel vehicles and trucks enter the market. The emission inventory discussed below is the same as the "base case" prepared for the Tier 2 proposed rulemaking.⁹ This inventory accounts for emission standards that have been promulgated already for each of the vehicle categories (e.g., light-duty,

heavy-duty highway and nonroad), but does not include the impact of proposed light-duty Tier 2 standards. The Tier 2 standards would tend to decrease the relative contribution of light-duty emissions in the inventory, and thus increase the heavy-duty and nonroad relative contributions. On the other hand, substantial growth in light-duty diesel sales would tend to substantially increase the light-duty vehicle PM inventory, because diesels emit more PM than the gasoline vehicles they replace. Although the fuel-neutral Tier 2 standards would tend to mitigate this impact, growth in diesel sales, especially before and during the phase-in years of the proposed Tier 2 program, would still tend to increase the light-duty PM inventories. These considerations are important in assessing how the focus for diesel fuel control may shift in the future, beyond the 2007–2010 base case view. The inventory is reported in the 2007–2010 time frame because those dates are important for State Implementation Plan purposes in attaining the ozone and PM NAAQS.¹⁰

Mobile source emissions account for almost one-half of all NO_x emissions nationwide. By 2010, mobile source NO_x emissions will total more than 7.8 million tons. As shown in Figure 1, by 2010, we project that all diesel engines combined will account for 53% (4.1 million tons) of mobile source NO_x emissions. Heavy-duty diesels account for 15% of the mobile source contribution, and nonroad diesels account for 38%.¹¹ Light-duty vehicles and trucks account for 40% of mobile source NO_x emissions. Currently, almost all of the light-duty fleet is fueled by gasoline, and less than 1% of the NO_x emissions come from light-duty diesels. In the 2007 inventory, the proportion of NO_x emissions from these various vehicle categories is similar.

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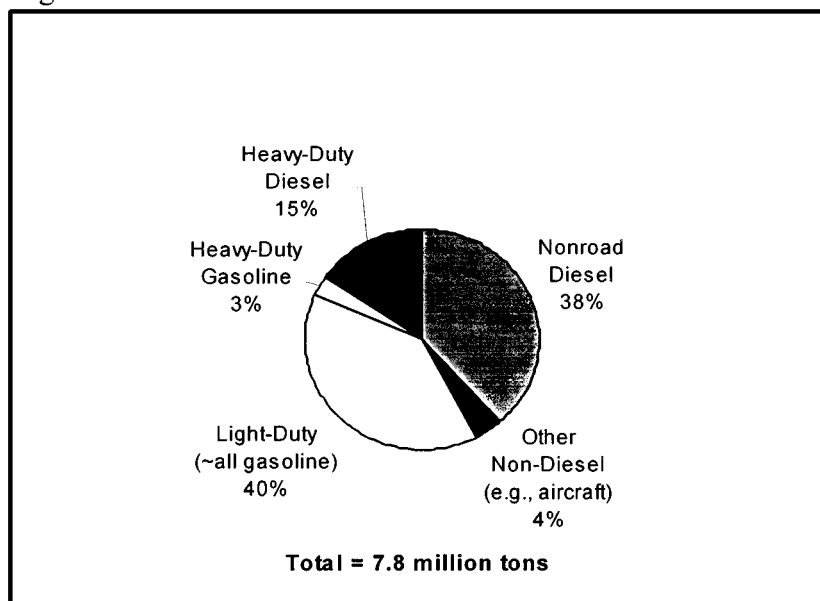
⁸ Motor vehicles' contribution to the VOC inventory typically consists of unburned fuel hydrocarbons in the exhaust and evaporative emissions from vehicle fuel systems.

⁹ For a further description of the emissions inventory, see Tier 2/Gasoline Sulfur Draft RIA; Chapter III.A. (EPA Docket A–97–10). Note that this is a 47-state emissions inventory, which excludes California, Alaska, and Hawaii.

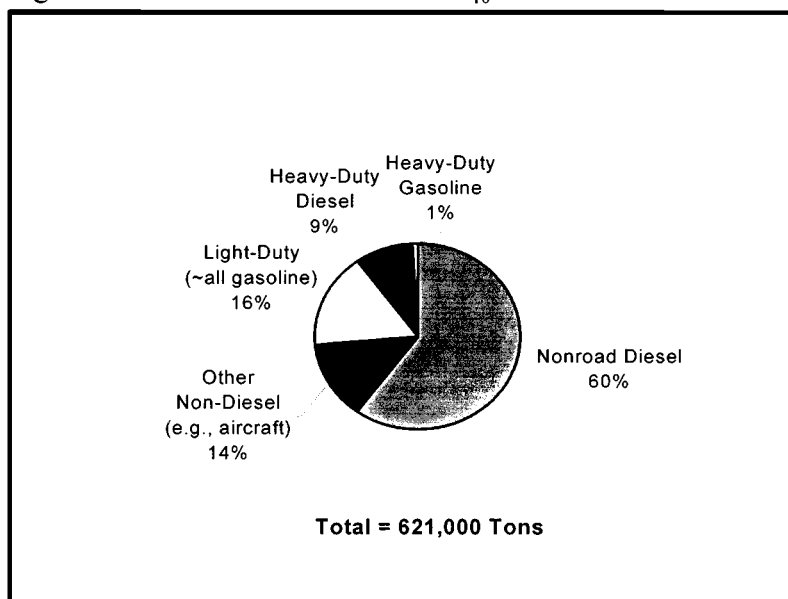
¹⁰ For further discussion on key ozone/PM State Implementation Plan timelines and attainment dates, see Section III.A. of the preamble to the Tier 2/Gasoline Sulfur proposed rule.

¹¹ In Figures 1 and 2, the "Nonroad Diesel" category includes nonroad equipment, locomotives, and commercial marine. The "Other Non-Diesel" category includes aircraft and non-road equipment powered by fuels other than diesel.

⁷ State of California, Air Resources Board, Resolution 98–35, August 27, 1998.

Figure 1. Mobile Source NO_x Emissions in 2010.

Mobile sources account for 20% of direct PM₁₀ emission inventories (excluding natural sources and fugitive dust). By 2010, mobile source direct PM₁₀ emissions will total almost 621,000 tons. As shown in Figure 2, by 2010, we project that diesel engines will account for nearly 70% (434,000 tons) of all mobile source PM₁₀ emissions. Heavy-duty diesels account for 9% of the mobile source PM₁₀ contribution, and nonroad diesels account for 60%. Light-duty vehicles and trucks account for 16% of mobile source PM₁₀ emissions. Currently, almost all of the light-duty fleet is fueled by gasoline. However, as more diesels enter the light-duty market, light-duty diesels could become a significant portion of mobile source PM emissions, as discussed above. The proportion of PM₁₀ emissions from these various vehicle categories in the 2007 inventory is similar.

Figure 2. Mobile Source Direct PM₁₀ Emissions in 2010.

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It is also important to note that mobile source emissions generally make up a larger fraction of the emission inventory for urban areas, where human population and light-duty vehicle travel is more concentrated than in rural areas. We recently conducted a study to compare the level and sources of

emissions in four U.S. cities (Atlanta, New York, Chicago, and Charlotte) versus the nationwide inventory.¹² For example, in Atlanta by 2010, mobile sources are expected to account for 81%

¹² For purposes of this study, the national inventory excludes California, Hawaii and Alaska. For a further description of this study of four cities, see Tier 2/Gasoline Sulfur Draft RIA, Chapter III.A.

of all NO_x emissions, while nationally they account for 44%. Similarly, in Atlanta by 2010, mobile sources will account for nearly 60% of all direct PM₁₀ emissions¹³, while nationally they account for 20%. Highway emissions of

¹³ This is the portion of the PM₁₀ inventory that excludes natural sources and fugitive dust.

NO_x, PM₁₀ and PM_{2.5} in Atlanta are more than double the national inventory. Nonroad PM₁₀ and PM_{2.5} emissions in Atlanta also are more than double the national inventory. In the other cities studied, mobile source NO_x and PM₁₀ emissions also were generally considerably higher than the national inventory.

At this stage, we have not yet evaluated the emission reductions that could be achieved by introducing higher quality diesel fuel and the technologies it may enable, since the effectiveness of these technologies remains uncertain. However, as discussed in Section VI.A., some people involved in the development of these technologies project per vehicle emission reductions of up to 75% for NO_x and over 80% for PM, and so large inventory reductions may be possible.

III. Diesel Emissions Control: Progress and Prospects

Since the 1970's, highway diesel engine designers have employed numerous strategies to meet the challenge presented by our emissions standards, beginning with smoke controls, and focusing in this decade on increasingly stringent NO_x, hydrocarbon, and PM standards. More recently, standards for various categories of nonroad diesel engines, such as those used in farm and construction machines, locomotives, and marine vessels, have also been pursued by the Agency. Our most recent round of standard setting for heavy-duty highway diesels occurred in 1997 (62 FR 54693, October 21, 1997), effective with the 2004 model year. This action, combined with previous standard-setting actions, will result in engines that emit only a fraction of the NO_x, hydrocarbons, and PM produced by their higher-emitting counterparts manufactured just a decade ago.

Nevertheless, certain characteristics inherent in the way diesel fuel combustion occurs have prevented achievement of emission levels comparable to today's gasoline-fueled vehicles. While diesel engines provide advantages in terms of fuel efficiency, durability, and evaporative emissions, controlling NO_x emissions is a greater challenge for diesel engines than for gasoline engines, primarily because of the ineffectiveness of three-way catalysis in the oxygen-rich diesel exhaust environment. Similarly, PM emissions, which are inherently low for gasoline engines, are more difficult to control in diesel engines, because the diesel combustion process tends to form soot and other particles. The challenge is compounded by the fact that most

diesel NO_x control approaches tend to increase PM, and vice versa.

Considering the air quality impacts of diesel engines and the plans of manufacturers to increase the market penetration of light-duty diesel vehicles, it is imperative that progress in diesel emissions control continue. Fortunately, encouraging progress is now being made in the design of exhaust aftertreatment devices for diesel applications. Aftertreatment devices, such as catalytic converters, which have been employed successfully on gasoline engines for decades, have had only limited use with diesel engines. This is primarily due to the difficulty of making such devices perform well in the diesel's oxygen-rich exhaust stream, and to the great success that diesel engine designers have had up to now in meeting challenging emission standards without aftertreatment. The combination of encouraging progress in effective aftertreatment design and the challenge presented by the proposed stringent Tier 2 standards is changing this situation. As discussed in detail below, promising new technologies may allow a step change in diesel emissions control, of a magnitude comparable to that ushered in by the automotive catalytic converter in the 1970's. However, it appears that changes in diesel fuel quality may be needed to bring this step change about.

IV. What Fuel Changes Might Help?

Debate and research on changing diesel fuel to lower emissions has focused on several fuel specifications: cetane level, aromatics content, fuel density, distillation characteristics (T90 and T95), oxygenates content, and sulfur content. Control of these parameters may have the potential to provide direct benefits by incrementally lowering emissions when the fuel is burned, although the benefit may vary depending on the sophistication of the engine technology involved.

Much of the available data on the effects of fuel parameter changes is for heavy-duty engines. In preparation for the 1999 technology review to assess the ability of heavy-duty diesel engines to meet the combined NO_x and nonmethane hydrocarbon (NMHC) standard in 2004, an industry/EPA workgroup was tasked with evaluating the incremental impact of changes in diesel fuel properties on NO_x and hydrocarbon emissions. This study employed advanced technology heavy-duty diesel engines expected to be used to meet the 2004 standard. These engines depend on exhaust gas recirculation (EGR) and optimization of engine design, but not on advanced aftertreatment. The study focused on

separately identifying the emissions impacts of changes in fuel density, aromatics content (both total and polycyclic aromatics), and cetane number (both natural and additive-enhanced).¹⁴

The results of this study showed that state-of-the-art heavy-duty engines are mostly insensitive to changes in these parameters. Changes in diesel fuel density and aromatics were found to have the greatest beneficial effect on emissions. Yet large concurrent changes in these fuel parameters reduced NO_x emissions by only 10%. Of the total effect, approximately 5% was attributed to the reduction in fuel density, and 5% to the reduction in aromatics content. Increasing the cetane number was found to have no observable emissions benefit, although previous studies on older-technology engines showed a benefit. Changing other fuel parameters was also found to have either no effect, or only a small effect on emissions. Effects on PM emissions were not included in this study.

Another study, documented as the "EPEFE Report", examined the effects of fuel parameter changes on NO_x, PM, hydrocarbon, and carbon monoxide emissions in both light- and heavy-duty diesel engines.¹⁵ This study also found only small effects on NO_x emissions from changes in density, polycyclic aromatics content, cetane, and T95 (less than 5% for any one parameter change, less than 10% overall). Although the magnitude and even the direction of the emissions changes were different for light- and heavy-duty vehicles, the small magnitude of the impacts was consistent. The largest impacts on PM emissions were from lowering T95 (7% in light-duty testing, no effect in heavy-duty testing) and density (19% in light-duty, 2% in heavy-duty), although the benefit of the density change was determined to be confounded by a physical effect—lower density fuel decreased the fueling rate and engine power which in turn affected emissions. Thus the need for additional data on how fuel changes affect PM emissions appears to be especially pronounced, especially considering the possible need for diesel PM reductions in the existing fleet to address potential air toxics concerns.

A lack of emissions sensitivity to changes in diesel fuel cetane and

¹⁴ "EPA HDEWG Program Phase 2", Presentation of the Heavy-Duty Engine Work Group at January 13, 1999 meeting of Clean Air Act Advisory Committee, Mobile Sources Technical Review Subcommittee, Washington, DC.

¹⁵ "EPEFE Report", European Programme On Emissions, Fuels, and Engine Technologies, ACEA/Europa Auto/Oil Programme.

aromatics content was observed in another recently-published paper, which reported on testing conducted with an advanced technology heavy-duty engine (designed to achieve a 2.5 grams/horsepower-hour (g/hp-hr) NO_x emissions level).¹⁶ A recent literature review of diesel emissions studies sought to decouple the incremental impact on emissions of changes in one fuel parameter from the impacts of changes in other fuel parameters.¹⁷ This review also found that the incremental effects on emissions (NO_x, PM, hydrocarbons, and carbon monoxide) of changes in diesel fuel composition are small or nonexistent for more advanced engine technologies. However, the review noted that any conclusion regarding the effect on emissions of adding oxygenates to diesel fuel must be considered tentative pending further investigative work. Of particular interest may be the impact on PM emissions of the use of oxygenates that contain a large fraction of oxygen per unit volume.

Reducing the sulfur content of diesel fuel has the potential to provide large indirect technology-enabling benefits in addition to some amount of direct emission benefits. In fact, sulfur reduction appears to be the only fuel change with potential to enable new technologies needed to meet Tier 2 light-duty or anticipated future heavy-duty standards. Therefore, although other specifications changes are under consideration, at this point we believe that sulfur control is the most likely means of achieving cost-effective diesel fuel emission reductions, as discussed in detail in the remainder of this notice.

Because we have more complete information on the effects that diesel fuel changes have on emissions from heavy-duty engines than from light-duty engines, we believe that any preliminary conclusions one might draw regarding changes other than sulfur are more tentative for light-duty applications. We welcome any information that would help us to assess the potential benefits and costs of changes other than sulfur in light-duty diesel fuel. Such information may become especially relevant if we pursue an implementation plan that treats this fuel separately, as discussed in Section XI.

Issue 1: Fuel Changes Other Than Sulfur.— *Should EPA pursue diesel fuel changes other than sulfur control? What costs and emission reductions would be involved? Are there additional data on emissions impacts of fuel changes, especially for light-duty applications? Should a diesel fuel quality program be structured to encourage gas-to-liquid or other non-petroleum blends?*

V. Diesel Fuel Quality in the U.S. and Other Countries

A. Current Diesel Fuel Requirements in the U.S.

EPA set standards for diesel fuel quality in 1990 (55 FR 34120, August 21, 1990). These standards, effective since 1993, apply only to fuel used in highway diesel engines. The standards limit the sulfur concentration in fuel to a maximum of 500 ppm, compared to a pre-regulation average of 2500 ppm. They also protect against a rise in the fuel's aromatics level from the then-existing levels by setting a minimum cetane index of 40 (or, alternatively, a maximum aromatics level of 35%). Aromatics tend to increase the emissions of harmful pollutants. These regulations were established in response to a joint proposal from members of the diesel engine manufacturing and petroleum refining industries to reduce emissions and enable the use of catalysts and particulate traps in meeting EPA's PM standards for diesel engines. As a result of our diesel fuel regulation, highway diesel fuel sulfur levels average about 340 ppm outside of California.¹⁸ Alaska has an exemption from our existing 500 ppm limitation (permanent in some areas, temporary in others) and is currently seeking a permanent exemption for all areas of the state, because of special difficulties in supplying lower sulfur diesel fuel for that market (63 FR 49459, September 16, 1998). Similarly, American Samoa and Guam also have permanent exemptions from our existing 500 ppm limitation (July 20, 1992, 57 FR 32010 and September 21, 1993, 58 FR 48968). We currently do not regulate diesel fuels that are not intended for use in highway engines. Diesel fuel sold for use in most nonroad applications such as construction and farm equipment has sulfur levels on the order of 3300 ppm.¹⁹

¹⁸ "A Review of Current and Historical Nonroad Diesel Fuel Sulfur Levels", Memorandum from David J. Korotney, Fuels and Energy Division, March 3, 1998, EPA Air Docket A-97-10, Docket Item II-B-01.

¹⁹ "A Review of Current and Historical Nonroad Diesel Fuel Sulfur Levels", Memorandum from David J. Korotney, Fuels and Energy Division, March 3, 1998, EPA Air Docket A-97-10, Docket Item II-B-01.

California set more stringent standards in 1988 for motor vehicle diesel fuels for the South Coast air basin. These standards took effect statewide in 1993. They apply to both highway and nonroad fuels (excluding marine and locomotive use), and limit sulfur levels to 500 ppm and aromatics levels to 10%, with some flexibility provisions to accommodate small refiners and alternative formulations.

B. Diesel Sulfur Changes in Other Countries

Progress toward diesel fuel with very low sulfur levels has advanced rapidly in some parts of the world. The European Union's "Auto Oil Package" was adopted recently in an effort to improve air quality, by establishing an integrated approach to setting requirements for fuels in such a way that vehicles can produce their best environmental performance.²⁰ As part of the Auto Oil Package, the European Union adopted new fuel specifications for diesel fuel.²¹ These specifications contain a diesel fuel sulfur limit of 50 ppm by 2005, with an interim limit of 350 ppm by 2000. The Member States will be required to monitor fuel quality to ensure compliance with the specifications.

In the United Kingdom, the entire diesel fuel supply soon will be at sulfur levels of 50 ppm, based on recent announcements by major refiners.²² The United Kingdom currently offers a two-penny tax break for diesel fuel. Finland and Sweden also have tax incentives encouraging low sulfur diesel fuel. Finland's tax incentive applies to diesel with sulfur levels below 50 ppm, which accounts for 90% of the Finnish market.²³ Sweden's tax incentive applies to diesel with sulfur levels below 10 ppm.²⁴

Japan recently proposed to limit sulfur in diesel fuel to 50 ppm.²⁵ The proposal allows a phase-in of about 10 years, to give refineries time to invest in new facilities. Japan's Environment

²⁰ "Newsletter from Ritt Bjerregaard, the EU's Commissioner for the Environment," European Commission, September 1998.

²¹ European Union Directive 98/69/EC published on December 28, 1998 (OJ L350, Volume 41, page 1).

²² Hart's European Fuels News, "All Change! Standard diesel dropped by UK as majors announce phase-out within weeks", February 10, 1999.

²³ "International Activities Directed at Reducing Sulphur in Gasoline and Diesel, A Discussion Paper," Dr. Mark Tushingham, Environment Canada, 1997.

²⁴ CONCAWE, Report No. 6/97, "Motor Vehicle Emission Regulations and Fuel Specifications—Part 2—Detailed Information and Historic Review (1970–1996)."

²⁵ "Sulfur Limit for Diesel Fuel May Be Lowered", *Japan Times Online*, June 2, 1998.

¹⁶ "The Effects of Fuel Properties on Emissions from a 2.5 gm NO_x Heavy-Duty Engine", Thomas Ryan III, Janet Buckingham, Lee Dodge, and Cherian Olikara, Society of Automotive Engineers Technical Paper No. 982491.

¹⁷ Fuel Quality Impact on Heavy-Duty Diesel Emissions: A Literature Review, Rob Lee, Joanna Pedley, and Christine Hobbs, Society of Automotive Engineers Technical Paper No. 982649.

Agency is expected to decide on the new diesel sulfur limit after holding hearings and consulting with the Central Environment Council, an advisory panel to the prime minister.

In North America, Mexico and Canada have regulated diesel sulfur levels to a maximum of 500 ppm, as in the U.S. Canada recently announced a proposal to lower gasoline sulfur, but the proposal does not address diesel fuel at this time. However, Canada recognized that a lower diesel sulfur level may be necessary to protect public health and to support future diesel engine technologies. The Canadian Government Working Group recommended that emissions from on-road diesel fuels be examined further to determine their impact on public health.²⁶

Issue 2: Experience Outside the U.S.—*What lessons can we learn from the experience of other countries in planning for and producing low sulfur diesel fuel?*

VI. Potential Benefits of Reducing Sulfur

We believe that diesel fuel desulfurization should be evaluated primarily for its potential to enable new engine and aftertreatment technologies with large air quality benefits. However, there may be other effects as well, as discussed further below.

A. Technology Enablement

Sulfur-sensitive technology enablements can be further grouped into two categories: those that can be achieved with some success using current fuel but which have significantly improved emissions performance with low sulfur fuel, and those that must have low sulfur fuel. The following discussion provides our current understanding of prospective technologies in both categories, built from a review of the technical literature and from numerous discussions with the people who are developing these concepts.

Note that we believe the viability and sulfur-sensitivity of these technologies are, to varying degrees, still open issues; also, there may be other promising technologies not included here. A major goal of this advance notice is to establish the degree of confidence warranted in claims that robust, cost-effective emission control technologies will be made viable or greatly enhanced by fuel desulfurization. Another major goal is to ascertain what sulfur levels may be needed. Manufacturers have

suggested that sulfur should be capped at 30 ppm, although the need for even lower levels has also been discussed. Even for those technologies that require low-sulfur fuel to function, there may be a range of operation in which the technologies may be able to tolerate higher sulfur levels but emissions performance may be further enhanced by additional reductions in fuel sulfur. We are interested in information that will help us understand both the range of sulfur levels over which operation of the relevant control technologies is possible, and the relationship between emissions performance and fuel sulfur levels within this range.

Issue 3: Sulfur-Tolerant Technologies.—*What full useful life NO_x and PM emission levels may be achievable for diesel passenger cars and light-duty trucks, and for heavy-duty engines, without a change in diesel fuel? At what costs? When could these levels be achieved in production vehicles and engines?*

Issue 4: Sulfur-Sensitive Technologies.—*How feasible are the sulfur-sensitive technologies (discussed below) for light-duty and heavy-duty applications? Are there others? What full useful life PM and NO_x emission levels could they achieve and when? What sulfur levels do they require? Are any of them substantially enhanced by additional sulfur reductions beyond the sulfur levels required just for proper functioning? What is the relationship between fuel sulfur levels and emissions performance associated with these technologies? How durable are they? What maintenance is required? What is the potential that they could eventually be made sulfur-tolerant? What are the cost implications? What is their fuel economy impact, if any? What problems might occur due to sulfur derived from lube oil being introduced into the combustion chamber, either through intentional mixing of used oil with fuel or from vaporization off of the cylinder wall?*

Issue 5: In-Use Emissions.—*How well will sulfur-sensitive emission control technologies perform over the complete range of operating cycles and environmental conditions encountered by vehicles in use? For example, will there be functional problems or high emissions during periods of sustained high loads or idling, or at extremes of ambient temperature and humidity?*

1. Technologies Improved By Sulfur Reduction

Technologies that may derive benefit from diesel fuel desulfurization include cooled EGR, lean-NO_x catalysts, PM

filters, oxidation catalysts, and selective catalytic reduction (SCR). None of these technologies appear to have a threshold low sulfur level, above which the technology is simply not viable. Rather, every degree of sulfur reduction would provide correspondingly greater latitude for engine or aftertreatment designers to target their designs for aggressive emission reductions. Thus, we need to be able to quantify the expected emission reductions in order to assess the effectiveness, including incremental cost-effectiveness analysis where appropriate, of various levels of control.

The application of electronically controlled EGR to diesel engines is an effective means of controlling NO_x emissions. Cooling the recirculated exhaust gas before it reenters the combustion chamber can greatly increase EGR efficiency. NO_x emissions reductions of up to 90% are believed possible with cooled EGR systems for heavy-duty diesel applications.²⁷ However, manufacturers have claimed that one of the primary limiters on how extensively cooled EGR can be used is the potential for condensation of sulfuric acid and associated corrosion-related durability problems. We have not yet received any durability data to support these claims using realistic in-use operating conditions and corrosion-resistant materials. Acid aerosol formation may also increase the frequency of oil changes due to increased acidification of engine lubricating oil. It is not clear at this time that removing sulfur from fuel is the only solution to these problems, if they indeed exist. Any actual oil acidification problem may be addressable by increasing alkaline oil additives, and corrosion-resistant materials are available for durable EGR cooler construction.

Various types of lean-NO_x catalysts are either in production or under investigation for reduction of NO_x emissions in lean exhaust environments such as those present in diesel exhaust. These catalysts include two types: (1) Active catalysts require a post-combustion fuel injection event and (2) passive catalysts require no post-injection. Although some active catalyst systems have higher NO_x removal efficiencies than similar passive catalyst systems, NO_x removal efficiencies are still only in the range of 15 to 35% on average. It is more likely that these systems will be used for incremental NO_x reduction for light-duty applications in combination with other

²⁶ "Final Report of the Government Working Group on Sulphur in Gasoline and Diesel Fuel—Setting a Level for Sulphur in Gasoline and Diesel Fuel," July 14, 1998.

²⁷ Dickey, D.W., et al., NO_x Control in Heavy-Duty Diesel Engines—What is the Limit? SAE Technical Paper Series, No. 980174, 1998.

technologies, such as cooled EGR. Lean- NO_x catalysts are prone to long-term efficiency loss due to sulfur-induced deactivation or "poisoning". They may also produce unwanted sulfate PM. Both of these problems can be mitigated by reducing fuel sulfur, though higher sulfur fuel can be accommodated by using less effective catalyst formulations.

One method of exhaust aftertreatment for controlling diesel PM emissions is to pass diesel exhaust through a ceramic or metallic filter (sometimes called a "soot filter" or "PM trap") to collect the PM, and to use some means of burning the collected PM so that the filter can be either periodically or continuously regenerated. Filter designs have used catalyzed coatings, catalytic fuel additives, electrical heating, and fuel burners to assist trap regeneration. Failure to consistently regenerate the filter can lead to plugging, excessive exhaust back-pressure, and eventually overheating and permanent damage to the filter. Inconsistent regeneration due to the low frequency of adequately high temperature exhaust transients has been a particular problem in applying PM filters to light-duty diesel vehicles. Although PM filters have been used with current fuels, some designs, especially those that use catalyst materials susceptible to sulfate generation, can be made more effective with lower sulfur fuel. In addition, some PM filter system concepts may *require* low sulfur fuel, as discussed below.

Oxidation catalysts are a proven technology already in widespread use on diesel engines. They reduce exhaust PM by removing volatile organics, some of which are adsorbed onto soot particles. They also reduce emissions of gaseous hydrocarbons. Oxidation catalysts have utility not only for direct reduction of PM and hydrocarbons, but also as a potential clean-up device to preclude hydrocarbon slip downstream of NO_x catalysts or PM filters that inject diesel fuel. In the relatively low-temperature environments characteristic of diesel engine exhaust streams, catalyst formulations containing precious metals such as platinum are particularly useful, because they function at fairly low temperatures. Unfortunately, these metals also promote the conversion of SO_x to sulfate PM, thus potentially *increasing* PM emissions, so oxidation catalyst designers must work a careful balance to succeed with current fuel. Sulfur reduction can obviously mitigate this problem and enable more aggressive oxidation catalyst formulations.

SCR for NO_x control is currently used on stationary diesel engines, and has

been proposed for mobile applications. SCR uses ammonia as a NO_x reducing agent. The ammonia is typically supplied by introducing a urea/water mixture into the exhaust upstream of the catalyst. The urea/water mixture is stored in a separate tank that must be periodically replenished. These systems can be very effective, with NO_x reductions of 70 to 90%, and appear to be tolerant of current U.S. on-highway diesel fuel sulfur levels. However, there is concern that applying current SCR technology to highway vehicles will require use of catalyst formulations that are sensitive to sulfur, such as those employing platinum, to deal with the broad range of operating temperatures typical of highway diesel engines in use. There is also potential for formation of ammonia sulfate, which is undesirable because it is a component of fine PM.²⁸ In addition, SCR systems bring some unique concerns. First, precise control of the quantity of urea injection into the exhaust, particularly during transient operation, is very critical. Injection of too large of a quantity of urea leads to a condition of "ammonia slip", whereby excess ammonia formation can lead to both direct ammonia emissions (with accompanying health and odor concerns) and oxidation of ammonia to produce (rather than reduce) NO_x . Second, there are potential hurdles to overcome with respect to the need for frequent replenishment of the urea supply. This raises issues related to supply infrastructure, tampering, and the possibility of operating with the urea tank dry. Third, there may be modes of engine operation with substantial NO_x generation in which SCR does not function well. Finally, there is concern that SCR systems may produce N_2O , a gas that has been associated with greenhouse-effect emissions.

Issue 6: Selective Catalytic Reduction—*How could the discussed difficulties with SCR ammonia slip, infrastructure, reductant maintenance, robustness, and N_2O production be resolved?*

2. Technologies Likely To Require Low Sulfur Fuel

Technologies that are not currently considered feasible with current fuel, but which might become feasible if the sulfur content of diesel fuel were lowered, include NO_x storage catalyst systems and continuously regenerable PM filter systems.

²⁸ "The Impact of Sulfur in Diesel Fuel on Catalyst Emission Control Technology", Manufacturers of Emission Controls Association, March 15, 1999.

Although still in early stages of development, NO_x storage catalyst technology shows promise for NO_x reductions of 50 to 75% in use. Some projections of ultimate efficiency range as high as 90%.²⁹ However, these catalysts are also very prone to sulfur poisoning due to sulfate buildup. Diesel engines employing NO_x storage catalyst systems will probably be limited to the use of diesel fuels with less than 30 to 50 ppm sulfur. Even at such fairly low sulfur levels, frequent sulfate purging cycles may be needed to restore catalyst function. Alternatively, even lower fuel sulfur levels, on the order of 5 to 10 ppm, may be needed to manage the frequency of purging cycles. Manufacturers have suggested that further development of NO_x catalyst systems could eventually enable diesel engines to reach the fuel-neutral Tier 2 fleet average NO_x standard of 0.07 grams/mile (see discussion below on Diesel Sulfur Control and Tier 2).

The recently developed continuously regenerating PM filter has shown considerable promise for light-duty diesel applications due to its ability to regenerate even at fairly low exhaust temperatures. This filter technology is capable of a large step change in PM emissions, with typical PM reductions exceeding 80%.³⁰ However, these systems are also fairly intolerant of fuel sulfur, and are effectively limited to use with diesel fuel with sulfur levels below 50 ppm. Given that these filter designs appear to have similar efficiencies to less sulfur-sensitive PM filter concepts, it is important for us to better understand potential advantages and disadvantages of the various trap concepts in determining whether or not low sulfur fuel is needed for effective PM control.

B. Other Effects

In addition to the primary benefits associated with the enablement or improved utilization of technologies discussed above, desulfurization could have other effects that should be assessed as well. Desulfurization will reduce the direct emissions of sulfate PM and SO_x , both of which are harmful pollutants. Sulfate PM emissions contribute to the overall inventory of PM_{10} and $\text{PM}_{2.5}$, both pollutants for which EPA has set National Ambient Air Quality Standards. SO_2 (one component of SO_x) is also a criteria pollutant, and some portion of emitted

²⁹ "The Impact of Sulfur in Diesel Fuel on Catalyst Emission Control Technology", Manufacturers of Emission Controls Association, March 15, 1999.

³⁰ Hawker, P., et al., SAE Technical Papers 980189 and 970182.

SO_x is chemically transformed in the atmosphere to sulfate PM, and is therefore considered a secondary PM source. Although we do not directly regulate the emissions of SO_x from diesel engines, because the overwhelming majority of these emissions are from stationary sources like powerplants, diesel SO_x reductions would nevertheless be of some benefit to the environment.

The introduction of desulfurized highway diesel fuel would provide immediate SO_x and PM emission reductions from the large and growing population of heavy-duty diesel engines in the United States. These emission reductions would even extend to some portion of the nonroad equipment fleet because some significant, though undetermined, portion of this fleet is fueled with highway diesel fuel rather than the generally less expensive nonroad diesel fuel, for reasons of convenience. In contrast to technology-enabling benefits, these direct emission reductions derive added air quality value from the fact that they are realized immediately as existing vehicles are refueled with the new fuel, rather than gradually over many years as new technology vehicles replace older models in the fleet.

On the other hand, although this secondary benefit from sulfate and SO_x reductions in the existing fleet would result whether or not we set new engine emission standards, it would not be expected to carry over to engines built after new sulfur controls take effect. This is because testing of these engines to verify compliance with motor vehicle emission standards would be expected to be conducted using a low sulfur test fuel, reflective of the in-use fuel. A low sulfur test fuel, with no change in emission standards, allows the engine manufacturer to back off on emissions controls to optimize engine cost, performance, or fuel economy. Thus earlier model year engines designed for higher sulfur fuel could actually run cleaner than later engines designed to the same standards, once sulfur controls take effect.

Issue 7: Direct Benefits of Sulfur Reduction—How much direct incremental environmental benefit can be achieved by diesel fuel sulfur reduction?

Manufacturers have claimed that lower sulfur fuel will improve the durability of engines and emissions controls, and will reduce the need for maintenance, including oil changes. These benefits would produce a cost savings to vehicle owners. They may also produce an indirect emissions

benefit because, although manufacturers must take steps to ensure durable emissions controls (such as providing warranties and assuming liability over a set useful life), many engines may have high emissions because they last well beyond the regulatory useful life or because they are poorly maintained. Therefore, provisions that inherently extend emission controls' life or reduce the need for emissions-affecting maintenance can be beneficial. Some manufacturers have claimed that this is especially relevant for engines employing an extensive degree of cooled EGR, although this is yet to be proven. As discussed above, we have not yet received any durability data to support these claims using realistic in-use operating conditions and corrosive resistant materials. On the other hand, because reduced sulfur appears to enhance the durability of the engines, and not just that of the emission controls, environmental disbenefits may result from diesel fuel sulfur reduction, due to the potential that higher-quality fuel will make older, higher-emitting engines last longer in the field. Furthermore, fuel changes may inadvertently and detrimentally alter fuel system components such as o-ring seals, and may also reduce the helpful lubricating effect that some sulfur compounds have on fuel system components, although it also appears that steps can be taken to preclude these effects, such as the use of lubricity additives.

Issue 8: Durability and Maintenance Impacts—Are there quantifiable environmental benefits or disbenefits from such secondary effects as more durable controls, reduced maintenance needs, or longer-lived high-emitting trucks? What steps, if any, need to be taken to ensure that fuel changes would not degrade fuel system components in the existing fleet? Would lubricity additives be required to restore any loss in fuel lubricity characteristics compared to current fuel? If so, what would the environmental and cost impacts of these additives be?

VII. Diesel Sulfur Control and Tier 2

Although almost all highway diesel engines used in the United States today are in heavy-duty trucks and buses, the impetus for near-term action on diesel fuel quality arises from our efforts to set stringent new Tier 2 emission standards for passenger cars and light trucks. These standards will apply to vehicles powered by any fuel—including both gasoline and diesel. As part of the Tier 2 rulemaking, we also are proposing to lower gasoline sulfur levels, in part to

enable the use of advanced catalytic converters. Manufacturers of diesel engines and vehicles have argued that setting Tier 2 standards without concurrent diesel fuel changes will be unfair to diesels, because diesel fuel quality would be worse than gasoline fuel quality. Some argue that, beyond fuel-neutrality considerations, diesel fuel quality improvement is needed to combat global warming because it will facilitate the marketing of more diesel vehicles and, in their opinion, thereby reduce emissions of global warming gases. Others counter that diesel vehicles should be discouraged because diesel exhaust is a serious health hazard that improvements in diesel fuel quality will do little to mitigate. Some also believe that any fuel economy improvements from diesels will be offset by manufacturers' sale of more large vehicles, resulting in no net improvement in fleetwide fuel economy, and thus no net reduction in global warming emissions.³¹

In establishing the Tier 1 light-duty vehicle standards currently in place, the Clean Air Act made special, explicit provision for diesel vehicles. However, the framework it provided us for the setting of Tier 2 standards made no special reference to diesel engines. In our July 1998 Tier 2 Report to Congress, we therefore concluded that Congress did not intend special treatment for diesel engines after 2003.

Under the Tier 2 proposal's fuel-neutral approach, there are not separate emission standards for diesels. However, the proposed Tier 2 program allows manufacturers to sell some engines with higher emissions—in the range achievable by both gasoline and diesel vehicles with current fuel quality—during the early phase-in years of the program. Table 1 summarizes the proposed Tier 2 emission standards. Manufacturers would have to meet a corporate average NO_x standard for the entire fleet of vehicles sold, but would have the flexibility to certify different vehicle models to different sets of emission standards (referred to as "bins"). Some bins have a NO_x emission standard that is higher, and some lower, than the corporate average NO_x standard. The proposed Tier 2 standards would be phased in over time, allowing a portion of a manufacturer's vehicle sales to meet the less stringent "interim" standards. During the phase-in years, the program would establish

³¹ Fleetwide fuel economy (for light-duty vehicles and light-duty trucks) is constrained by the Corporate Average Fuel Economy (CAFE) standards established by the government.

separate interim standards for the following vehicle categories:

- LDVs and light light-duty trucks (LLDTs), less than 6000 pounds GVWR.
- Heavy light-duty trucks (HLDTs), 6000 pounds GVWR or greater.

Table 2 shows when the interim and Tier 2 standards would be phased in, by indicating the percentage of manufacturers' vehicle sales required to meet the respective standards each year. Even when the Tier 2 standards are fully phased in, manufacturers still would be

able to certify vehicles in the higher-emitting bins. However, sales of vehicles in the higher-emitting bins would be limited by a manufacturer's ability to comply with the proposed corporate average NO_x standard.

TABLE 1.—PROPOSED TIER 2 EXHAUST EMISSION STANDARDS ³²

		Corporate average NO _x (grams/mile)	Highest-emitting certification bin (grams/mile)	
			NO _x	PM
LDV/LLDT				
Interim		0.30	0.60	0.06
Tier 2		0.07	0.20	0.02
HLDLT				
Interim		0.20	0.60	0.06
Tier 2		0.07	0.20	0.02

³² This table does not reflect all proposed Tier 2 standards; it shows full useful life standards for categories and pollutants relevant to the discussion in this notice.

TABLE 2.—PROPOSED PHASE-IN FOR TIER 2 STANDARDS

	Model year (percent)					
	2004	2005	2006	2007	2008	2009 & later
LDV/LLDT						
Interim	75	50	25	.....	.....	.....
Tier 2	25	50	75	100	100	100
HLDLT						
Interim*	25	50	75	100	50	.....
Tier 2 .....	.....	.....	.....	.....	50	100

*0.60 grams/mile NO_x cap applies to balance of these vehicles during the 2004–2006 phase-in years.

As shown in Tables 1 and 2, some diesel and gasoline LDV/LLDTs could be certified to emission standards of 0.60 grams/mile NO_x and 0.06 grams/mile PM through the 2006 model year. HLDTs, where diesels are most likely to find a large market, could be certified to these same emission standards through 2008. We expect that these “highest bin” emission standards, although challenging, could be met by diesel vehicles without fuel changes. In model year 2007 and beyond for LDV/LLDTs, and in model year 2009 and beyond for HLDTs, the highest emission standards available for vehicle certification would be 0.20 grams/mile for NO_x and 0.02 grams/mile for PM. It is likely that diesel fuel sulfur control would be needed to enable diesels to achieve these more stringent emission standards.³³

³³ It should be noted that the Tier 2 proposal also includes elimination of the highest bin after 2007 for LDV/LLDTs and 2009 for HLDTs, thus requiring compliance with a NO_x standard of 0.15 grams/

Furthermore, even though some HLDTs can be marketed in the highest bin (0.60 NO_x/0.06 PM) through model year 2008, by model year 2007, or perhaps even 2006, the phase-in percentage of the more stringent interim corporate average NO_x standard (0.20 grams/mile) becomes great enough that it may start to curtail sales of vehicles in the highest bin. Thus, diesel fuel changes may be critical for continued sales of diesel-powered HLDTs in these earlier model years.

In summary, it appears most likely that the need for diesel vehicles to employ technologies dependent on low sulfur diesel fuel under the Tier 2 program will occur by the 2006 or 2007 model year, implying that low sulfur fuel should be available for these vehicles sometime in 2005 or 2006. This presumes of course that the development of robust, sulfur-sensitive diesel technologies achieving the Tier 2

mile. This would further reinforce the need for advanced technologies.

emission levels will be successful. There may also be merit in providing for an early introduction of the low sulfur fuel, at least perhaps on a limited basis, to allow proveout of technologies that require this fuel.

Issue 9: Diesels In Tier 2—*If diesel fuel changes were not adopted, when and to what extent would the anticipated diesel market growth be curtailed under the proposed phased in approach to Tier 2? What is the likelihood that diesels will not be able to meet proposed Tier 2 standards even with fuel changes? What is the likelihood that advances in sulfur-tolerant control technologies would negate the need for low sulfur fuel after a few years? Would an early introduction phase of low sulfur fuel to demonstrate technologies be of value? How soon and on what scale might this be implemented?*

VIII. Heavy-Duty Highway Engines

The sulfur-sensitive technologies discussed above show promise in a wide range of diesel applications, including light- and heavy-duty vehicles and nonroad equipment. Heavy-duty engines typically have different operating characteristics than light-duty engines, most notably more frequent occurrences of higher temperature exhaust stream flows that can facilitate catalysis. These differences may affect design decisions, such as what catalyst formulations and devices to use, but do not appear to be so great as to rule out technology-enabling sulfur control for any class of diesel applications. Particularly if sulfur-sensitive technologies work well on light-duty vehicles, we would expect them also to find application with heavy-duty engines.

Engine designers are now developing engines to meet the 2004 heavy-duty highway engine NO_x + NMHC emission standard that we set in 1997. We are currently conducting a technology review, to be completed later this year, to re-evaluate the appropriateness of this standard. Although low-sulfur fuel would add to the control options available for engines designed for this standard, we do not expect it to provide corresponding new-engine emissions benefits without changes in the engine emissions standards. Manufacturers would be likely to design engines to emit at roughly the same NO_x levels either way—low enough to meet the standards with some compliance margin—and take advantage of the higher quality fuel to improve fuel economy or other performance parameters. Engine changes that improve fuel economy, such as timing advance, may incidentally decrease PM emissions as well, but the degree to which this would happen without a change in standards is uncertain.

Although we have not yet performed an assessment of the feasibility of more stringent NO_x and PM standards for heavy-duty highway engines in model years after 2004, the technologies discussed above show great promise for large further reductions in these emissions. The concurrent need for diesel fuel changes to enable these technologies would, of course, be an important part of any Agency activity directed toward setting more stringent standards, as would an evaluation of the air quality need for further diesel engine emission reductions and of the need for adequate leadtime for engine manufacturers to implement new standards. The earliest that EPA could implement more stringent than current

NO_x standards that might be enabled by low sulfur diesel fuel is the 2007 model year. More stringent PM standards based on such fuel could be evaluated for implementation as early as model year 2004. The Agency would address these issues further in a separate regulatory action.

Issue 10: Future Heavy-Duty Highway Engine Standards—*How do emission control challenges and solutions differ for light- and heavy-duty diesel engines? How might these differences affect fuel quality requirements? What heavy-duty NO_x and PM emission standards may be feasible with low sulfur fuel? When could they be implemented? What would be the cost of such heavy-duty emission standards?*

Low sulfur fuel may also bring about a potentially very large environmental benefit in the existing fleet of diesel engines. There are programs under consideration by some states through which older diesel engines would be retrofitted with emission-reducing technologies. Some of the sulfur-sensitive technologies discussed above may be useful for this purpose. Aftertreatment devices have proven especially adaptable to retrofit situations, although some of the more sophisticated systems that require careful control of engine parameters may not be as suitable. Thus sulfur reduction could potentially enable not just incremental emission reductions from the existing fleet, but large, step-change reductions in PM and NO_x as well, in areas where incentives for retrofitting are provided. Note that this benefit could be extended to nonroad diesel engines, provided the retrofit program ensures fueling with low sulfur fuel as well.

Issue 11: Retrofit Potential—*Can the sulfur-sensitive emission control technologies be retrofit to existing engines? At what cost? What environmental benefits might be achieved?*

IX. Nonroad Engines

We are interested in improvements in the quality of fuel consumed in nonroad diesel engines for several reasons:

- Nonroad diesel engines are a major contributor to air quality problems.
- Many of the technologies under development to meet the 2004 heavy-duty highway NO_x + NMHC emission standard are transferable to these engines.
- Many of the advanced aftertreatment technologies discussed above could be applied to them as well.

- Nonroad diesel fuel currently is unregulated and typically has high sulfur levels.³⁴

- Refiners may make different plant changes to meet highway fuel regulations if action is taken on nonroad fuel quality as well.

The diesel engine dominates the nonroad equipment market above 50 horsepower (hp). These engines are used in such applications as farming and construction. A large and growing market for diesel engines below 50 hp also exists. Consistent with the less advanced state of nonroad engine emission regulations, we currently do not regulate nonroad diesel fuels. However, some sizeable but unknown portion of nonroad equipment uses lower sulfur highway fuel for reasons of user convenience, and in California nonroad diesel fuel is regulated to the same specifications as highway fuel. Locomotives and marine vessels use separate diesel fuel stocks, which are unregulated as well.

Our recent rulemaking setting new nonroad diesel engine standards established the feasibility of these standards without requiring changes to nonroad diesel fuel (see 63 FR 56968, October 23, 1998). That rule set multiple tiers of standards with increasing stringency: Tiers 1 and 2 for smaller engines (below 50 hp) and Tiers 2 and 3 for larger engines. (Tier 1 standards for larger engines were set in a previous rule.) However, due to a lack of available information on PM emissions during transient operation, the rule deferred action on Tier 3 PM standards until another rulemaking, planned for completion in 2001. That rule will also review the feasibility of the Tier 3 NO_x + NMHC standards and the smaller engine Tier 2 standards, and will consider moving the Tier 3 standards for engines at or above 300 hp forward in time, as discussed in the October 1998 final rule. These standards are currently set to be implemented in 2006.

Our ability to set stringent Tier 3 PM standards while maintaining an effective program of NO_x control may be limited by the high sulfur levels in nonroad diesel fuel. The intended transfer of technology developed to meet the heavy-duty highway 2004 standard for NO_x + NMHC, such as cooled EGR, may be jeopardized, unless nonroad fuel sulfur levels, and also perhaps cetane/aromatics levels, are controlled to levels similar to those available on-highway—maximum 500 ppm sulfur and minimum 40 cetane

³⁴ Diesel fuel sold in most nonroad applications has sulfur levels on the order of 3300 ppm, as discussed in Section V.A.

index (or, alternatively, maximum 35% aromatics content). Of course, we are concerned about the ability of refiners to provide higher quality nonroad fuel in Tier 3, which begins in roughly the same time frame in which large sulfur reductions for gasoline and highway diesel fuel may be implemented. This concern and the potential benefits of a coordinated, phased approach, are discussed further in the section on refinery impacts below.

Beyond fuel changes needed for Tier 3 nonroad engines, it is reasonable to expect that advanced aftertreatment technologies, should they prove effective in highway engines, could be used in many nonroad applications as well. If, in the future, we determine that more stringent nonroad diesel engine emission standards beyond Tier 3 are appropriate, further desulfurization of nonroad diesel fuel would also therefore need to be considered. The timing of such standards and fuel requirements would need to provide adequate leadtime after the implementation of Tier 3 nonroad diesel engine emission standards in 2006–2008. Retrofit opportunities similar to those discussed above for highway engines may also exist, perhaps on an earlier time frame than post-Tier 3 nonroad emission standards, making use of highway fuel.

Issue 12: Future Nonroad Diesel Engine Standards—*If EPA were to adopt Tier 3 PM standards on the order of the current highway PM standard (0.10 g/hp-hr measured over a transient test), would nonroad fuel sulfur regulation to 500 ppm or less be needed? Would the highway fuel cetane/aromatics specification need to be adopted as well? Are there differences between highway and nonroad applications that would affect fuel specifications? What nonroad NO_x and PM emission standards beyond Tier 3 may be feasible with very low sulfur fuel? When could they be implemented? What would the cost of these standards be? What sulfur levels would be needed? What information is available about the relationship between nonroad fuel sulfur levels and nonroad engine emissions?*

Even if we do not adopt regulations in the near term to improve the quality of nonroad diesel fuel, it may be necessary at least to consider capping nonroad diesel fuel sulfur levels as part of any highway fuel sulfur reduction program, in order to preclude a shift of unwanted sulfur to nonroad fuel in the petroleum refining process. This shift could occur either through sulfur dumping or through redirection of higher sulfur

blendstock streams to nonroad fuel production.

Issue 13: A Cap On Nonroad Diesel Fuel Sulfur Levels—*Will there be a tendency for nonroad diesel fuel sulfur levels to increase if highway fuel sulfur is reduced? Would we need to cap nonroad fuel sulfur levels?*

X. Refinery Impacts and Costs

A. Investments and Costs

Desulfurization of diesel fuel to very low levels is expected to involve substantial capital investments and added operating expenses by petroleum refiners. Improvements in nonroad fuel to a quality level similar to that of current highway diesel fuel would also be a major undertaking for refiners. We are interested in any information that would help us to assess these costs, both on an industry-wide scale and for segments of the industry that might experience special challenges, such as small refiners and small refineries. We also welcome suggestions on means by which such impacts can be softened, while still achieving the intended environmental benefit, such as by delaying requirements for small refiners. The following discussion outlines some of the issues we are aware of.

Some refineries, especially those with modern hydrotreating plants, may be able to accomplish the needed sulfur removal by upgrading existing units. Such upgrades could be accomplished by such means as increasing catalyst density, employing more active catalysts, operating at higher temperatures, and reducing the level of hydrogen sulfide in the recycled hydrogen gas. Other refineries may need to build new hydrodesulfurization units and require time for planning, permitting, and construction. The degree to which new plants must be built will, of course, depend on how much of the diesel fuel pool must be desulfurized and to what levels. Both retrofits and new units will require additional hydrogen and energy supply, as well as additional processing of the sulfur removed in the hydrotreater. The prospect of widescale gasoline and diesel fuel desulfurization activity is spurring research and development in innovative hydrotreating technologies, such as countercurrent processing employed in the SynSat process and catalytic distillation being developed by CDTech. Such developments are expected to lower the cost of desulfurization.

One novel technology that shows promise involves the use of enhanced biological agents to convert sulfur compounds in the fuel to removable and

marketable byproducts. This method, though still unproven on a large scale, has experienced rapid progress over the last several years. Even if it does not prove cost-effective as a primary desulfurization solution, it may find utility in partially desulfurizing selected blendstocks to an intermediate sulfur level before hydrotreating, or in small refineries unable to afford large capital outlays. We are interested in information that would help us to assess the feasibility and costs of this technology and, considering that it appears to be much less energy-intensive than traditional methods, its potential for reducing global warming gas emissions.

Issue 14: Sulfur Reduction Methods—*How would refiners accomplish diesel fuel sulfur reduction to various maximum sulfur specifications, for examples, 5, 10, 30 and 50 ppm? What capital investments would be required and how would they be financed? How soon could it be accomplished? How would a shift in the relative demand for diesel fuel and gasoline affect these decisions? How much additional energy would be needed to produce the fuel? What other operating costs would be incurred? What would be done with the removed sulfur? How would these answers change if only the sulfur levels in light-duty diesel fuel were further controlled? Is there value in regulating average sulfur levels in a refinery's diesel fuel production, in addition to or instead of maximum fuel sulfur levels?*

In addition to requiring changes at the refinery, diesel fuel quality improvement may affect the fuel distribution system as well. All phases of the distribution process would likely need to maintain the quality of the fuel leaving the refinery. This may be particularly challenging if a very low sulfur level is required, considering that other refinery products carried in the same transportation network may continue to have very high sulfur levels. Additional storage tanks might also be required.

Issue 15: Distribution System Quality Control—*What if any problems (beyond those already experienced in handling multiple fuels in the distribution system) arise in ensuring that low sulfur fuel supplies leaving the refinery remain low in sulfur in a distribution system that may also carry fuels with much higher sulfur levels? Will complete separation of supply infrastructures be necessary? Is there a minimum practical sulfur level that distributors can comply with, considering limitations of available measurement and segregation methods?*

One element in the assessment of refinery impacts is our recently proposed gasoline sulfur reduction program, associated with proposed Tier 2 vehicle standards. The proposed gasoline sulfur control requirements would cause refiners to undertake substantial investments to upgrade their processing facilities in roughly the same time frame as that envisioned under a diesel desulfurization program. Gasoline and diesel fuel production operations are not independent, and a refiner's choice of desulfurization methods or of specific equipment configurations may be affected by how desulfurization requirements for the two fuels are implemented. Even more significantly, any shift toward more diesel fuel demand due to the introduction of new diesels into the light-duty market will have a major effect on refiners' capital investment plans.

Sulfur exists naturally in crude oil. The extent to which sulfur ends up in gasoline and diesel fuel is dependent on the amount of sulfur in the crude and on the refinery processes used. One option to reduce sulfur in both gasoline and diesel is to use crude oil with a lower sulfur content. However, the availability and cost of low sulfur crude substantially limit the ability of refiners to use such an approach.

Regarding refinery processes, refiners would need to decide where in the process to perform desulfurization steps. Absent more stringent diesel sulfur control, many refiners may choose to add (or upgrade) process units that remove sulfur selectively from blendstocks used to manufacture gasoline to meet the proposed reduction in gasoline sulfur. If a reduction in diesel sulfur is also required, some refiners may choose to add (or upgrade) process units that selectively remove sulfur from the blendstocks used to manufacture diesel fuel. Although such blendstock processing units have no functional overlap, refiners could benefit from knowing whether reductions in both diesel and gasoline sulfur would be needed before investing in new facilities to remove sulfur from gasoline blendstocks. Upgrades in hydrogen production facilities, basic utilities, and waste treatment facilities are needed to support the addition or expansion of gasoline and diesel fuel blendstock desulfurization units. If a refiner knew that reducing diesel fuel sulfur was to be required in addition to reducing gasoline sulfur, it might save money by building a single support facility to supply the hydrogen and other needs of both the diesel and gasoline blendstock desulfurization

units rather than building separate support facilities.

Other refiners may choose to add (or upgrade existing) process units that remove sulfur from the crude oil fractions used to manufacture both gasoline and diesel fuel blendstocks. Such units could be useful in meeting a refiner's desulfurization needs either in addition to, or in place of, units that remove sulfur from diesel or gasoline blendstocks. If a reduction in diesel sulfur is required, refiners might choose to invest more heavily in processing units that remove sulfur upstream in the refinery process rather than in "end of pipe" units that remove sulfur from diesel or gasoline blendstocks separately. It should be noted that, although both gasoline and diesel fuel desulfurization may involve large capital investments, aggressive desulfurization of diesel fuel tends to improve the cetane of the final product by removing aromatics, whereas it tends to lower the octane of gasoline, requiring additional steps to restore gasoline fuel quality.

Issue 16: Impact On Gasoline Sulfur Control and Other Refinery Changes—*How would the imposition of more stringent controls on diesel fuel sulfur affect a refiner's strategies to meet the proposed gasoline sulfur requirements? What are the advantages to refiners in being able to plan facility changes to meet more stringent gasoline and diesel sulfur controls at the same time? How would other planned or likely refinery changes relate to diesel fuel sulfur control?*

Issue 17: Costs—*What are the total and per-gallon incremental costs to produce highway diesel fuel meeting various maximum sulfur specifications, for example, 5, 10, 30, and 50 ppm? What are the costs to produce nonroad diesel fuel: (1) Meeting a maximum sulfur specification of 500 ppm, and (2) meeting all of the current EPA highway fuel specifications? How do these costs vary if the sulfur reduction projects for diesel and gasoline are implemented together compared to if the diesel sulfur reduction is implemented some time after gasoline sulfur reduction without regard to economies of coordinated planning?*

Issue 18: Small Refiners and Small Refineries—*How might desulfurization requirements uniquely affect a small refiner? How might they affect smaller refinery operations within larger companies? Are special provisions, such as a delayed requirement, appropriate?*

Issue 19: Flexible Strategies—*Are there program strategies that could reduce costs or increase flexibility for*

refiners? (for example: phase-in of requirements, streamlining of the permitting process, banking and trading of credits for early or excess compliance, refinery averaging with upper limit cap). What limits would need to be placed on these flexibilities to ensure that sulfur-sensitive vehicle technologies are not degraded?

Issue 20: Petroleum Imports—*Would a requirement for low sulfur fuel affect our degree of reliance on foreign sources of petroleum and diesel fuel?*

Issue 21: Impacts On Other Refinery Products—*How would diesel fuel sulfur reductions impact the quality, cost, and availability of other products such as jet fuel, kerosene, and heating oil, and how would these impacts vary by region?*

Issue 22: Uncertainties—*How will major uncertainties facing diesel engine use, such as health effects concerns and growing interest in nontraditional fuels, affect the demand for diesel fuel? How can these issues be factored into Agency action to preclude expensive short-lived refinery investments?*

B. Refinery Emissions

The technologies used for diesel desulfurization have the potential to increase air pollutants at the refinery. To different degrees, desulfurization technologies involve the use of a furnace and, thus, potentially could increase pollutants associated with combustion, such as NO_x, PM, SO₂, and carbon monoxide. The addition of these technologies also could result in increased process vent emissions and equipment leaks of petroleum compounds, which could increase emissions of VOCs and hazardous air pollutants (HAPs). Increased removal of sulfur from the diesel stream likely will require increased throughput for a number of refinery processes, such as the sulfur recovery unit, which converts hydrogen sulfide into elemental sulfur and is associated with SO₂ emissions. Relative to gasoline desulfurization, we expect that diesel desulfurization would result in higher emissions on a per gallon basis, because of the increased temperatures and hydrogen needed to remove sulfur in diesel fuel. Any emission increases associated with diesel desulfurization will vary from refinery to refinery, depending on a number of source-specific factors, such as the specific refinery configuration, choice of desulfurization technology, amount of diesel production, and type of fuel used to fire the furnace.

From a climate change perspective, we also want to better understand the impact on greenhouse gas emissions at the refinery. We are interested in how

diesel desulfurization process changes would affect greenhouse gas emissions at refineries.

Issue 23: Refinery Emissions—*What emissions impacts at the refinery would be expected from producing low sulfur diesel fuel (assuming gasoline sulfur reduction is already taken into account)? What are the potential emission increases (or decreases) of regulated air pollutants and greenhouse gases?*

XI. Prospects for a Phased Approach

It is possible that higher quality diesel fuel will be needed for the light-duty Tier 2 program, but would only be needed to meet future heavy-duty engine standards at a later date. This would create a dilemma because currently both light- and heavy-duty applications use the same fuel, sharing a common fueling infrastructure that is vastly dominated by heavy-duty usage. Creation of a separate light-duty diesel fuel pool and infrastructure for an interim period would be the obvious solution. However, requiring a separate high quality grade of diesel fuel for use in vehicles subject to the Tier 2 emissions standards may involve investment by refiners, distributors, and retailers in the new tankage and other facilities necessary to keep such fuel segregated from other on-highway diesel fuel. It also could lead to loss of environmental benefits and even engine or aftertreatment device damage due to misfueling, although fueling nozzle interface requirements could help to mitigate this. Furthermore, the temporary nature of this separate fuel pool would depend on a determination that the same ultimate fuel specifications are appropriate for both light- and heavy-duty applications. As discussed in Section IV, more information is needed in order to assess this.

Despite the issues involved in creating a light-duty fuel infrastructure, we are interested in evaluating this approach for several reasons. First, we would expect it to allow for the introduction of low sulfur fuel for the light-duty vehicle market at an earlier date. Second, such a limited fuel pool may allow for other fuel quality improvements, besides reduced sulfur, if deemed appropriate. Third, the availability of this fuel would facilitate the early introduction of low-emitting heavy-duty technologies in demonstration, credit banking, or retrofit fleets. Finally, the production costs would be reduced because refiners could focus desulfurization activities on those diesel blendstock streams easiest

to desulfurize. This would save on operational costs for hydrogen, energy, and byproduct treatment, and, more importantly, would allow refiners to phase in major capital outlays, if needed, for future heavy-duty fuel programs.

A phased approach could be carried still further by introducing the low sulfur fuel into the heavy-duty fuel pool gradually, as needed to support new trucks and buses employing the sulfur-sensitive technologies. Eventually, as the fleet turned over, so would the fuel pool, in a fashion similar to the turnover to unleaded gasoline. The benefit of such phased approaches would be offset somewhat by the need for a separate refueling interface, for additional tankage and plumbing to segregate product streams, and perhaps by additional dyeing requirements.

A parallel approach could be used to introduce nonroad diesel fuel regulated to similar quality levels as current highway fuel, to support the nonroad Tier 3 emission standards program, if such fuel is found to be needed for this program. With the adoption of a refueling interface to avoid misfueling, new Tier 3 engines could use the higher quality fuel, while pre-Tier 3 engines could continue to use the unregulated fuel, thus allowing a gradual phase-in of the Tier 3 fuel to match the growing population of these engines in the fleet. Again, the benefit of this approach would need to be evaluated against the disadvantage of added complexity.

Distributors and retailers clearly would take on an additional burden to support a light-duty fuel. If light-duty diesel fuel were not easily available to consumers, people would be unlikely to buy diesel cars and light-trucks. However, we would expect that many urban/suburban service stations that currently provide diesel fuel would simply switch to the low sulfur fuel and not install additional pumps because their heavy-duty diesel fuel volume is not large. Some highway truck stops already have separate pumps for the convenience of drivers of smaller diesel vehicles, though owners of these stations may need to make changes in tankage utilization to segregate fuels. Vehicle and fuel pump nozzle manufacturers would need to create a new fueling interface to preclude misfueling, similar to what was done when unleaded gasoline was introduced.

Issue 24: Phased Approach—*What would the challenges be to refiners and distributors associated with introducing a separate "light-duty low-sulfur grade" of diesel? How soon could it be done?*

How much would it cost? How large would the fleet of vehicles using this fuel have to be to make it cost-effective? Would the relatively small fraction of a refiner's total diesel output needed for this market make it possible for refiners to produce it without significant additional facility investments? To what extent would additional storage tanks and fuel pumps need to be installed to accommodate a separate grade of fuel? What pump/vehicle refueling interface changes (or other measures) are needed to preclude misfueling? What fuel dyeing requirements would need to be adopted? What are the merits of a program in which the sulfur level is reduced in two or more steps, especially if very low sulfur levels are determined to be needed eventually?

Issue 25: Coverage—*Would widespread geographic coverage have to be mandated to ensure success? Based on current light-duty diesel experience, are there segments of the retail diesel fuel market that could be exempted from providing this fuel without discouraging vehicle sales? Could the phased concept be extended to accommodate a gradual turnover of the heavy-duty fuel pool? Should requirements during a phase-in be focused on sales at retail outlets (thus providing the opportunity for smaller businesses to defer implementation), or on refiner production?*

Although a phased approach covering all of the diesel fuel pools could take many forms, it may be helpful to consider an example of such an approach to better understand how it might work. For example, fuel desulfurized to technology-enabling levels (30 ppm for the sake of this example) might be provided in 2004 at a small number of urban and rural locations, to support the limited production and sale of advanced technology diesel light-duty (and perhaps heavy-duty) vehicles. This would comprise an early introduction program to prove and perfect these technologies. In 2005 this offering would expand to supply the light-duty diesel vehicles requiring it under the Tier 2 program. More stations and fuel would be involved to ensure that the fuel is widely available to consumers buying these vehicles. Also in 2005, 500 ppm nonroad fuel would begin phasing in, with broad nationwide coverage but only in quantities needed to meet the demand created by the sales of new Tier 3 equipment. Unregulated nonroad diesel fuel also would continue to be sold, but would gradually be phased out as demand for it declined. In 2006 and 2007, the supply of 30 ppm sulfur fuel

would continue to expand to support the introduction of heavy-duty vehicles equipped with advanced technologies needed to meet new heavy-duty emission standards. This expansion would increasingly focus on truck stops that had not already transitioned to supplying the 30 ppm sulfur fuel in the earlier years of the programs. At some point over the following years, the demand for higher sulfur highway fuel would decline to a point at which it would no longer be cost-effective to maintain two highway fuel pools, and its production would cease. Throughout the phase-in period, separate high and low sulfur refueling interfaces, and perhaps other measures, would need to be maintained to avoid misfueling.

Issue 26: Example Phase In Scenario—*Would a comprehensive need-based phase-in such as the one in the example work? What measures could be taken to facilitate it?*

XII. Vehicle Operation With Higher Sulfur Fuel

Many line-haul diesel trucks regularly or occasionally cross our borders with Canada and Mexico. Canada recently adopted the 500 ppm sulfur limit that has been in effect in the U.S. since 1993. Further fuel quality regulation is under consideration but may not take effect until well after a desulfurization program begins here, if at all. Mexico also has regulations intended to control diesel fuel sulfur to the 500 ppm level, but we are not aware of activity there aimed at achieving further reductions. In addition to potential cross-border differences, Alaska, American Samoa and Guam currently have exemptions from our existing 500 ppm limitation because of special difficulties in supplying low-sulfur diesel fuel for those markets. A long-term decision whether Alaska, American Samoa and Guam should continue to have exemptions will need to be made in this rulemaking once a decision is made on the appropriate diesel fuel sulfur level.

Cross border traffic will impact prospects for effective emissions control based on low sulfur diesel fuel. If a truck with sulfur-sensitive emission controls is fueled in Canada or Mexico with higher sulfur fuel, the emission controls may be reversibly or irreversibly degraded by catalyst poisoning, sulfate PM production, or some other mechanism. If the degradation is severe or irreversible enough, that truck may actually pollute for long periods at levels higher than earlier generation trucks, thus contributing to the air quality problems of our neighbors, and to our own

problems after the truck's return to the U.S. In addition, trucks with sulfur-sensitive emission controls that are permanently operated in a state exempt from fuel sulfur controls might likewise emit at very high levels, thus either resulting in a disbenefit to the local environment or forcing adoption of a program that requires the continued marketing of earlier generation, non-sulfur sensitive truck engines in that state. A similar issue arises in considering whether or not there is a need for a complete turnover of the diesel fuel inventory to low sulfur formulations before any introduction of low-sulfur technologies can occur, thus precluding any economy derived from a gradual phase-in or from any sort of regional flexibility in implementing the program.

These concerns would be greatly mitigated by evidence that sulfur-sensitive technologies will be robust enough to quickly recover from episodes of operation with higher sulfur fuel, and that their continuous operation on higher sulfur fuel will not result in more emissions than those from comparable engines not equipped sulfur-sensitive technologies.

Issue 27: Ability To Accommodate Some Higher Sulfur Fuel—*What is the potential for irreversible damage to sulfur-sensitive emission control hardware due to fueling with higher sulfur fuel? How might this vary with the length of exposure and the age of this equipment? What is the potential for high sulfate PM production while burning this fuel?*

Issue 28: Alaska Exemption—*Should Alaska be exempted from any future low sulfur fuel requirements? Why or why not? What provisions could be made to ensure that such an exemption does not cause unacceptable emissions in and outside Alaska? What about the U.S. territories that also currently have an exemption (Guam and American Samoa)?*

Issue 29: Cross-Border Traffic—*What percentage of U.S. trucks refuel in Canada or Mexico and how often? How will this change in the future? What are the prospects for diesel fuel desulfurization in these countries? Are there reasonable measures that can be taken to avoid damage to sulfur-sensitive emissions controls?*

XIII. Stakeholder Positions

Over the past year or so, various interested groups have expressed their positions on sulfur levels in diesel fuel. Here, we summarize only those positions that have been communicated formally (either to EPA or other

governmental entities). One goal of this notice is to generate discussion that will help us better understand the positions of these and other stakeholders.

Together, the (then existing) American Automobile Manufacturers Association, the European Automobile Manufacturers Association, and the Japan Automobile Manufacturers Association proposed a World-Wide Fuel Charter in June 1998.³⁵ The goal of this global fuels harmonization effort is to develop common, worldwide recommendations for "quality fuels", considering customer requirements and vehicle emissions technologies. Three categories of fuel quality are proposed for diesel fuel, based on the extent of emission control requirements. Category 3 fuel quality is for markets with advanced requirements for emission controls (such as California Low and Ultra-Low Emission Vehicles). The sulfur content recommended for Category 3 diesel is 30 ppm.

The Ford Motor Company, Chrysler Corporation (now DaimlerChrysler) and General Motors Corporation further urged the Administration to make significant progress in bringing about low sulfur diesel and gasoline fuels. These companies stressed the importance of low sulfur diesel and gasoline fuels in reducing vehicle emissions and enabling the successful introduction of advanced engine and emission control technologies.³⁶

The State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) adopted a resolution urging us to pursue the most stringent highway and nonroad diesel fuel sulfur standards that are technologically and economically feasible.³⁷ These associations believe that stringent national standards for diesel sulfur, combined with stringent standards for low sulfur gasoline and vehicle emissions, are essential to address the full range of the country's air pollution problems— including ozone, particulate matter, regional haze and toxics. STAPPA/ALAPCO recommended that such diesel sulfur standards take effect by 2003. They

³⁵ "Proposed World-Wide Fuel Charter", issued by the American Automobile Manufacturers Association, the European Automobile Manufacturers Association, and the Japan Automobile Manufacturers Association, June 1998.

³⁶ Letter from Robert J. Eaton, Chrysler Corporation, Alex Trotman, Ford Motor Company and John F. Smith, Jr., General Motors Corporation, to Vice President Al Gore, July 16, 1998.

³⁷ "STAPPA/ALAPCO Resolution on Sulfur in Diesel Fuel," October 13, 1998. Letter from S. William Becker, Executive Director of STAPPA/ALAPCO, to Carol Browner, Administrator of U.S. EPA, October 16, 1998.

urged us to announce our intention to adopt such standards as soon as possible, so that petroleum refiners could consider the least-cost ways of complying with both gasoline and diesel sulfur controls. They also urged us to consider nonroad diesel fuel changes and to adopt the most stringent sulfur standards feasible to enable emerging control technologies.

The Engine Manufacturers Association (EMA) also urged us to reduce the sulfur content of diesel fuel.³⁸ EMA cited the need for low sulfur diesel fuel to enable the introduction of new catalytic aftertreatment devices, reduce fine particulate emissions, and improve engine emissions durability. EMA is involved in a number of activities with other organizations to support low sulfur diesel fuel requirements. EMA offered to share the data from each of these projects with us as they become available. These activities include:

- Requesting the Manufacturers of Emission Control Association (MECA) to draft a "White Paper" addressing the technical need for low sulfur diesel fuel from an aftertreatment perspective.³⁹
- Conducting a joint test program with the U.S. Department of Energy to evaluate four levels of diesel sulfur (350 ppm, 150 ppm, 30 ppm and 10 ppm) with five different aftertreatment technologies and four different diesel engines.
- Examining the impact of fuel sulfur on engine life, particularly the corrosive effects.
- Analyzing the environmental impact of reduced sulfate conversion and effects on the particulate matter emissions inventory from diesel engines.
- Preparing an economic analysis of the refining costs associated with lowering diesel sulfur levels, considering proposed changes to gasoline sulfur and potential synergies from reducing sulfur in the input stream rather than individual distillate streams.

³⁸ Letter from Jed R. Mandel, Engine Manufacturers Association, to Margo T. Oge, Director, Office of Mobile Sources, EPA, November 6, 1998.

³⁹ This paper is available in Docket A-99-06: "The Impact of Sulfur in Diesel Fuel on Catalyst Emission Control Technology", Manufacturers of Emission Controls Association, March 15, 1999.

XIV. Public Participation

We are committed to a full and open regulatory process with input from a wide range of interested parties. If we proceed with a proposed rule, opportunities for input will include a formal public comment period and a public hearing.

With today's action, we open a comment period for this advance notice (see **DATES**). We encourage comment on all issues raised here, and on any other issues you consider relevant. The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. All comments, with the exception of proprietary information, should be directed to the docket (see **ADDRESSES**). If you wish to submit proprietary information for consideration, you should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If you want us to use a submission of confidential information as part of the basis for a proposal, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission, it will be made available to the public without further notice to the commenter.

XV. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as any regulatory action (including an advanced notice of proposed rulemaking) that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This Advance Notice was submitted to OMB for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this Notice.

XVI. Statutory Provisions and Legal Authority

Statutory authority for the fuel controls discussed in this notice comes from section 211(c) of the Clean Air Act. Section 211(c) allows EPA to regulate fuels where emission products of the fuel cause or contribute to air pollution which reasonably may be anticipated to endanger public health or welfare or where emission products of the fuel will impair to a significant degree emission control equipment.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 1, 1999.

Carol M. Browner,
Administrator.

[FR Doc. 99-11383 Filed 5-6-99; 11:03 am]

BILLING CODE 6560-50-P



Thursday
May 13, 1999

Part IV

**Department of
Housing and Urban
Development**

**Public Housing Assessment System
(PHAS) Information About PHAS Scoring:
Introduction; Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4509-N-01]

Public Housing Assessment System (PHAS) Information About PHAS Scoring: Introduction

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: HUD's Public Housing Assessment System (PHAS), established by final rule published on September 1, 1998, provides for a new system for the assessment of America's public housing. Under the PHAS, HUD evaluates a public housing agency (PHA) based on four key indicators: (1) The physical condition of the PHA's properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the resident's assessment (through a resident survey) of the PHA's performance. This notice, together with five other notices published in today's **Federal Register**, provide additional information about the PHAS scoring process under each of the four indicators and other relevant information about PHAS scoring.

FOR FURTHER INFORMATION CONTACT: For further information contact, Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024; telephone Customer Service Center at 1-888-245-4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background—The Public Housing Assessment System (PHAS)

A. Overview of the PHAS

On September 1, 1998 (63 FR 46596), HUD published a final rule, codified at 24 CFR part 902, that established a new system for the assessment of America's public housing. The PHAS is designed to enhance public trust by creating a comprehensive oversight tool that effectively and fairly measures a PHA based on standards that are objective and uniform. The PHAS becomes effective for all PHAs with fiscal years ending on and after September 30, 1999. HUD's Real Estate Assessment Center (REAC) is charged with the responsibility for assessing and scoring the performance of PHAs under the PHAS.

This notice provides an overview of the PHAS. The information provided in this notice is based largely on the preamble to the PHAS final rule published on September 1, 1998. Although the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act, Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) (QHWRA) makes changes to the U.S. Housing Act of 1937 (1937 Act) that affect the PHAS, these changes will be the subject of future proposed rulemaking.

Under the PHAS, HUD examines four essential areas of public housing operations to determine a PHA's performance in delivering HUD programs and services. These areas of operations (or indicators of a PHA's performance) are:

- (1) The physical condition of a PHA's public housing properties;
- (2) The PHA's financial condition;
- (3) The PHA's management operations; and
- (4) The resident's satisfaction (through a resident survey) with the PHA's services.

1. PHAS Indicator #1—Physical Condition of PHA Properties

The Physical Condition Indicator, PHAS Indicator #1, provides for the assessment of the physical condition of the PHA's properties. A PHA must maintain its public housing in a manner that meets HUD's Uniform Physical Condition Standards, established in a September 1, 1998 final rule of the same name (63 FR 46566) and incorporated in the PHAS final rule. These standards are intended to ensure that public housing (as well as other HUD assisted housing) are maintained in a condition that is decent, safe, sanitary and in good repair. The standards address six major areas of the housing to be evaluated:

- (1) Site;
- (2) Building exterior;
- (3) Building systems;
- (4) Dwelling units;
- (5) Common areas; and
- (6) Health and safety.

In establishing uniform physical condition standards, HUD believed that housing assisted under its programs should be subject to uniform standards, and that the source of the HUD subsidy should not determine the standards to which the housing is subject. Additionally, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform and consistent. To provide for uniformity in inspection, HUD developed and has implemented a new computer-driven physical

inspection protocol. The computer program guides an inspector through the inspection prompting the necessary observations to be made regarding the condition of the property. The computer program is based on substantially objective observations, which significantly minimize the possibility for subjective interpretation of the physical condition standards. The results of the inspection are electronically transferred to HUD.

To ensure the independence of the physical inspection, HUD has entered into contracts with private inspection firms to perform the inspection. All inspectors are trained under HUD auspices in the use of the inspection protocol. Upon becoming certified, inspectors obtain their PHA inspection assignment from the REAC. The inspector downloads the property profile information on the selected PHA's development via the internet from the HUD Home page. The inspector then completes the inspection using a hand-held computer that uses the HUD software. After the inspection is completed, the inspector will upload the inspection results to HUD's central information data repository (CIDR) where it will be verified for accuracy and then scored.

Total Points for PHAS Indicator #1. The total point value of the Physical Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Physical Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

2. PHAS Indicator #2—Financial Condition

The Financial Condition Indicator, PHAS Indicator #2, provides for the assessment of the PHA's financial condition. Specifically, this indicator measures whether a PHA has sufficient financial resources and is managing those financial resources effectively to support the provision of decent, safe, and sanitary housing to its residents. A PHA's financial condition is measured on the basis of uniform financial reporting standards.

In a final rule published on September 1, 1998 (63 FR 46582), HUD issued uniform financial reporting standards for HUD housing programs. This final rule requires PHAs and owners of multifamily properties to prepare the financial information that these entities already submit to HUD annually, in accordance with generally accepted accounting principles (GAAP) and to submit these reports electronically. While the September 1, 1998 final rule titled "Uniform

Financial Reporting Standards for HUD Housing Programs" applies to PHAs, the September 1, 1998 PHAS final rule incorporates these standards and requirements.

The key indicators used to determine a PHA's financial condition include:

- (1) *Current Ratio*—current assets divided by current liabilities;
- (2) *Number of Months Expendable Fund Balance*—number of months a PHA can operate on the Expendable Fund Balance without additional resources; Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources; unreserved and undesignated fund balance;
- (3) *Days Receivable Outstanding*—average number of days tenant receivables are outstanding;
- (4) *Vacancy Loss*—loss of potential rent due to vacancy;
- (5) *Expense Management/Energy Consumption*—expense per unit for key expenses, including energy consumption, and other expenses such as utilities, maintenance, security; and
- (6) *Net Income or Loss divided by the Expendable Fund Balance*—measures how the year's operations have affected the PHA's viability.

Additional components may be used to identify circumstances in which there exists the possibility of higher risk of waste, fraud and abuse. These components will be used to detect fraud and will be used to generate "flags" that will signal field staff, Enforcement Center staff, or fraud investigators to take appropriate action. These components will primarily relate to financial management, but may also be used to provide a PHA with benchmarking information to allow the PHA to measure its own performance against its peers. For example, HUD will look to the Audit Opinion to provide an additional basis for accepting or adjusting financial indicator scores.

Total Points for PHAS Indicator #2. The total point value of the Financial Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Financial Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

3. PHAS Indicator #3—Management Operations.

The Management Operations Indicator, PHAS Indicator #3, provides for the assessment of a PHA's management operations. This indicator basically reflects the requirements of the Public Housing Management Assessment Program (PHMAP), the predecessor to the PHAS.

The PHAS preserves the statutory indicators found in section 6(j) of the U.S. Housing Act of 1937 Act (1937 Act), with some minor reorganization (from that in the PHMAP) which is designed to reflect their integration into the broader PHAS assessment and to establish their new point values within the PHAS. The statutory indicators are:

- (1) Vacancy rate;
- (2) Unexpended Section 14 (of the 1937 Act) funds;¹
- (3) Rents uncollected;
- (4) Energy consumption;²
- (5) Unit turn-around time;
- (6) Outstanding work orders; and
- (7) Annual inspection of units.

The Management Operations Indicator of the PHAS incorporates the seven statutory indicators of section 6(j) of the 1937 Act. As is the case under PHMAP, statutory indicators (1) and (5) are combined under the new PHAS. The statutory energy consumption indicator is part of PHAS Indicator #2 (Financial Condition). Under PHMAP, the energy consumption indicator is part of the financial management indicator. The energy/utility consumption expenses faced by a PHA on an annual basis will be part of the PHA's annual financial report to HUD.

With respect to PHMAP non-statutory indicators, the security indicator remains part of the Management Operations assessment under the PHAS. The resident services and community building indicator is now replaced by a separate indicator (PHAS Indicator #4—Resident Service and Satisfaction). Similarly, the financial condition indicator is now replaced by a separate indicator (PHAS Indicator #2, Financial Condition).

The analysis of the individual statutory management indicators will not deviate significantly from the existing assessment system. Scores will continue to be based on a PHA's certification to the various management operations indicators. As under PHMAP, for the Management Operations Indicator of the PHAS, a PHA will submit certifications as to its

¹ Note that although unexpended section 14 funds was a statutory indicator at the time of issuance of the PHAS final rule, section 522 of QHWRRA repeals section 14 of the 1937 Act. QHWRRA replaces the unexpended section 14 funds indicator with amount and percentage of funds provided to the PHA from the Capital Fund which remains unobligated by the PHA after 3 years. HUD is currently undergoing negotiated rulemaking to develop a proposed rule for the Capital Fund. The change in indicators will be addressed by the proposed rule, to be published later, that will make changes to the PHAS.

² The QHWRRA replaces energy consumption with utility consumption. Again this change will be made in the upcoming PHAS proposed rule.

performance under each of the management indicators, and a PHA's certifications will be subject to independent verification. Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories.

Total Points for PHAS Indicator #3. The total point value of the Management Operations Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Indicator #3 (Management Operations), a PHA must receive a score of at least 60 percent of the 30 points available.

4. PHAS Indicator #4—Resident Service and Satisfaction.

The Resident Service and Satisfaction Indicator, PHAS Indicator #4, assesses the level of resident satisfaction with PHA housing and services. This PHAS Indicator consists of existing PHMAP Indicator #7, resident services and community building, revised to (1) be consistent with the framework of the new PHAS, and (2) provide a separate resident services satisfaction survey. The objective of PHAS Indicator #4 is to measure the level of resident satisfaction with living conditions at the PHA's properties.

To achieve an acceptable score under this indicator, a PHA must obtain a response from a statistically significant sample of public housing residents. The PHA will be responsible for developing a follow-up plan to address issues resulting from the survey. The resident service and satisfaction assessment score will include two components of the survey process, plus a threshold requirement.

(1) The first component will be the score of the survey results. The survey content will focus on resident evaluation of overall living conditions to include topics such as: (i) maintenance and repair (i.e., work order response); (ii) communications (i.e., perceived effectiveness); (iii) safety (i.e., perceived perception of personal security); (iv) services (i.e., recreation and personal programs); and (v) neighborhood appearance.

(2) The second component will be a score based on the PHA's level of implementation and its follow-up or corrective actions based on the results of the survey.

(3) The third component, the threshold requirement, which is not scored, is verification that the survey process was managed in a manner consistent with guidance provided by HUD, or if the survey results are determined to be altered by the PHA.

Total Points for PHAS Indicator #4. The total point value of the Resident Service and Satisfaction Indicator is 10 of the 100 points available under the PHAS. A PHA will not receive any points if the survey is not conducted in accordance with HUD prescribed methodology or if the survey results are determined to be altered by the PHA.

B. PHAS Assessment Periods and Reporting Dates

The September 1, 1998 PHAS final rule provides for the new PHAS to become effective for PHAs with fiscal years ending September 1999 and later. Financial reports due for PHAs with fiscal years ending in September 1999 and later must be prepared on a GAAP basis.

The first scores under PHAS will be issued not later than December 1999 for PHAS with fiscal years ending September 1999. From the date of the September 1, 1998 PHAS final rule, PHAs are provided one year before the new PHAS scores are issued. Until September 30, 1999, PHAs will continue to be scored under the current PHMAP. The implementation schedule for PHAS reporting by PHAs is described on the following table:

REAL ESTATE ASSESSMENT CENTER (REAC) ASSESSMENT PERIODS AND REPORTING DATES

REAC assessment results		Financial reporting	Physical inspection	Management operations	Resident survey
Score issued	Period covered Fiscal Year End ¹	Due date ²	Inspection dates ³	Submission due date ⁴	Survey dates ⁵
12/1999	9-30-99	11-30-99	7/99-9/99	11-30-99	4/99-9/99
03/2000	12-31-99	2-28-2000	10/99-12/99	2-28-2000	10/99 12/99
06/2000	3-31-2000	5-31-2000	1/2000-3/2000	5-31-2000	1/2000-3/2000
09/2000	6-30-2000	8-31-2000	4/2000-6/2000	8-31-2000	4/2000-6/2000
12/2000	9-30-2000	11-30-2000	7/2000-9/2000	11-30-2000	7/2000-9/2000

Notes:

¹ The period covered for each indicator will be the PHA's entire fiscal year ending on dates shown above. Once the new PHAS is effective, a PHA cannot change its fiscal year for a period of 3 years.

² PHAs with fiscal years ending 9-30-99 and later must provide GAAP financial reports. These reports must be provided by electronic submission not later than 60 days after the end of the PHA's FY. Audited GAAP reports (due 9 months after the close of the FY in accordance with the Single Audit Act and OMB Circular A-133) will be used to update and confirm unaudited financial results. If significant differences are noted between unaudited and audited results, scoring penalties will apply. For those PHAs that spend less than \$300,000 of Federal funds, HUD cannot require or pay for an audit in accordance with the Single Audit Act. HUD, however, can require and pay for an "Agreed-Upon Procedures" report that could be specifically directed at verifying calculations.

³ Physical inspections will be scheduled to approximate the new PHAS calculation dates; i.e. within the final quarter of the PHA's fiscal year.

⁴ The certifications and supporting documentation required for the Management Operations Indicator will be due 60 days after the end of the PHA's fiscal year.

⁵ Resident surveys will be required to be conducted during the course of a PHA's fiscal year and will be required to be submitted by a PHA at the time that the PHA submits the certifications required under the Management Operations Indicator.

C. PHAS Advisory Scores

During this one year transition period, the September 1, 1998 final rule advised that advisory scores for physical condition and financial management may be issued to provide guidance to PHAs. On December 31, 1998 (63 FR 72319), HUD published a notice that advised of REAC's intent to issue advisory scores. The notice provided in relevant part as follows:

The REAC intends to provide every PHA with an advisory score before the PHA receives its official PHAS score. The REAC, however, will issue advisory PHAS scores only after it has a complete set of data for all four indicators. With respect to Indicator #1 (Physical Condition), the REAC is responsible for assessing the physical condition of PHA properties and therefore receives this indicator information firsthand. Information regarding the other indicators is provided to the REAC by the PHAs (as for example, the PHA annual financial reports). If the PHA fails to timely submit this information to the REAC, then issuance of the PHAS advisory score will be delayed until the REAC receives the necessary information. (63 FR 72319)

The December 31, 1998 Notice also presented the schedule for providing advisory scores to PHAs.

D. Scoring Performance Under the PHAS and Consequences of the Score

In order to determine a composite score for each PHA, the four PHAS Indicators will be individually scored and then combined to present a composite score that reflects the overall performance of PHAS for a total of 100 possible points. Again, the 100 points are distributed among the four PHAS Indicators as follows:

(1) Physical Condition—Maximum 30 Points: The PHA's score is based on the results of physical inspections of PHA properties performed by REAC contractors. The results are electronically transmitted to the REAC.

(2) Financial Condition—Maximum 30 Points: The PHA's score is based on unaudited generally accepted accounting principles (GAAP) electronically submitted by the PHA to the REAC. The PHA's submission is audited by an Independent Public Accountant (IPA), as required under the Office of Management and Budget

Circular A-133, and the audit results electronically transmitted to the REAC.

(3) Management Operations—Maximum 30 Points: The PHA's score is based on an electronic certification made by the PHA and verified by an IPA. This performance indicator uses six of the same indicators as the current Public Housing Management Assessment Program.

(4) Resident Service and Satisfaction—Maximum 10 Points: The PHA's score is based, in part, on responses to a resident survey managed by the PHA and collected by the REAC. The PHA's score is also based on the PHA's implementation of the resident survey and the PHA's follow-up actions on survey results. This part of the score is an electronic certification made by the PHA and verified by an IPA.

On the basis of these four indicators, HUD's REAC calculates a composite score for each PHA. The PHAS composite score represents a single score for a PHA's entire operation under the four indicators. The PHAS composite score will determine whether a PHA is performing well or is not performing well. The PHAS composite

score is derived from the scores calculated for each of the four indicators. The composite PHAS score will be issued by the REAC for each PHA 60 to 90 calendar days after the end of a PHA's fiscal year. Adjustments to the PHAS score may be made after a PHA's audit report for the year being assessed is transmitted to the REAC. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between the unaudited and audited results, a PHA's PHAS score will be raised or lowered, as applicable, in accordance with the audited results.

Based on its overall PHAS score, a PHA will fall into one of three categories:

High Performer. A PHA that achieves a score of at least 60 percent of the points available under each of the four PHAS Indicators, and achieves an overall PHAS score of 90 percent or greater shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator. High performers will be afforded incentives that include relief from reporting and other requirements.

Standard Performer. A PHA that achieves a total score of less than 90% but not less than 60% shall be designated as a standard performer. All standard performers must correct reported deficiencies. A standard performer PHA that receives a score of less than 70% but not less than 60% will be referred to the appropriate HUD area HUB/Program Center and will be required to submit an improvement plan

to correct and eliminate deficiencies in the PHA's performance. Standard performers that receive a score over 70% may also be required to submit an improvement plan to correct or eliminate any deficiency. A PHA that achieves a score of less than 60 percent of the total points available under PHAS Indicators #1, #2, or #3 shall not be designated a standard performer, but shall be designated a troubled performer.

Troubled Performer. A PHA that achieves a total PHAS score of less than 60 percent, or achieves a score of less than 60 percent of the total points available under PHAS Indicators #1, #2, or #3, shall be designated as troubled, and referred to HUD's Troubled Agency Recovery Center (TARC) for oversight and remedial action. A PHA that does not correct identified deficiencies within a maximum of two years will be referred to HUD's Departmental Enforcement Center for further action. In accordance with section 6(j)(2) of the 1937 Act, a PHA that receives less than 60 percent of the maximum calculation for the modernization indicator under the PHAS Management Indicator (Indicator #3) may be subject to certain sanctions as provided in 24 CFR 902.67.

II. Information About the PHAS Scoring Process

Section I of this notice provided an overview of the new PHAS. More detailed information about the PHAS is available in the preamble to the PHAS final rule published on September 1, 1998, and in the PHAS regulations, codified in 24 CFR part 902. In the

preamble to the September 1, 1998 PHAS final rule, HUD stated that before the PHAS became fully operational in October 1999, HUD would make available additional documents, guidance, and assistance about the processes of the new PHAS (63 FR 46598). HUD's December 31, 1998 notice provided information about the advisory score process. The notices that follow this introductory notice are specifically directed to providing further information about the PHAS scoring process for each of the four indicators. The notices, published in today's **Federal Register**, and that immediately follow this introductory notice are:

- Notice of PHAS Physical Condition Scoring
- Notice of PHAS Appeals and Technical Review of Physical Inspection Results
- Notice of PHAS Financial Condition Scoring
- Notice of Management Operations Scoring
- Notice of Resident Service and Satisfaction Scoring

As the notices describing the processes will show, the PHAS is designed to provide relevant and verifiable measures that directly relate to PHA performance.

Dated: May 6, 1999.

Barbara L. Burkhalter,
Deputy Director, Real Estate Assessment Center.

[FR Doc. 99-11911 Filed 5-12-99; 8:45 am]

BILLING CODE 4210-32-P



Thursday
May 13, 1999

Part V

**Department of
Housing and Urban
Development**

**Public Housing Assessment System
Physical Condition Scoring Process;
Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4509-N-02]

Public Housing Assessment System Physical Condition Scoring Process

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public about HUD's process for issuing scores under the Physical Condition Indicator of the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024; telephone Customer Service Center at 1-888-245-4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Additional information is available from the REAC Internet Site, <http://www.hud.gov/reac>.

SUPPLEMENTARY INFORMATION:

Purpose of This Notice

The purpose of this notice is to provide additional information about the scoring process for PHAS Indicator #1, Physical Condition. The purpose of the Physical Condition assessment is to ensure that public housing units are safe, decent, sanitary and in good repair, using HUD's uniform physical condition standards for the assessment. The physical condition assessment under the PHAS utilizes uniform physical inspection procedures to determine compliance with the uniform standards and is an important indicator of a PHA's performance.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points under PHAS Indicator #1. The physical condition score is included in the aggregate PHAS score.

The PHAS/REAC Physical Inspection and the HQS Inspection

The PHAS physical inspection is performed by HUD's Real Estate Assessment Center (REAC), and is also referred to as the REAC physical inspection. The REAC physical inspection encompasses virtually everything covered by the Housing Quality Standards (HQS) inspection. The REAC physical inspection,

however, is more objective and more defined in identifying and classifying deficiencies. While the HQS inspection generates a reasonably subjective "pass/fail" designation, the REAC inspection generates much more comprehensive results, such as:

- Physical scores reported at the property level;
- Area level scores for each of the five REAC physical inspection areas; and
- Observations of deficiencies recorded by the inspector electronically at the time of the inspection.

The Physical Inspection Scoring Process

1. Definitions

The following are the important definitions of terms used in the physical condition scoring process:

Score means a number between 0 and 100 that reflects the physical condition of a property, inspectable area, or sub-area:

- To record a health or safety problem, a letter is added to the property score (a, b, or c); and
- To note that smoke detectors are inoperable or missing, an asterisk (*) is added to the property score.

Inspectable area means any of the five major components of the property, which are:

- Site.
- Building exteriors.
- Building systems.
- Common areas.
- Dwelling units.

Sub-area means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

Inspectable items refer to walls, kitchens, bathrooms, and other things to be inspected in an inspectable area. The number of inspectable items may vary from 8 to 17 items for each area. Weights are assigned to each item as shown in Appendix 1 (Item Weights and Criticality Levels).

Deficiencies refer to specific problems, comparable to HQS, that can be recorded for the inspectable items, such as a hole in a wall or a damaged refrigerator in the kitchen.

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. Appendix 1 also lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical. The deficiencies also have assigned values used in scoring as follows:

Criticality	Level	Value
Critical	5	5.00

Criticality	Level	Value
Very important	4	3.00
Important	3	2.25
Contributes	2	1.25
Slight contribution	1	0.50

Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the property score. For example, a clogged drain in the kitchen is more critical than a damaged surface on a counter top. Therefore, more points will be deducted for a clogged drain than for a damaged surface.

Severity means one of three levels that reflect the extent of damage associated with each deficiency, with values assigned as follows:

Severity	Value
Severe	1.00
Major	0.50
Minor	0.25

Appendix 1 shows the severity levels that are possible for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity, as described below. For specific definitions of each severity level, see the REAC's "Dictionary of Deficiency Definitions," which is available from REAC's Internet Site, <http://www.hud.gov/reac> and is reproduced in this Notice as Appendix 2 (Dictionary of Deficiency Definitions).

Normalized area weights mean weights used with area scores to create property level scores. The weights are adjusted to reflect the inspectable items that are present.

2. Scoring Process Input

To generate accurate scores, it is crucial to determine the appropriate relative weights of the various components of the inspection; that is, which components are the most important, the next most important, and so on. To develop the scoring methodology for the PHAS physical inspection, HUD utilized information provided by several knowledgeable parties, including:

- Professionals experienced in assessing the physical condition of properties;
- Representatives from the housing and public housing industries; and
- HUD professionals.

In an extensive series of meetings, these parties gave HUD valuable advice and comments on the relative weights and values for inspectable areas, items,

criticality of deficiencies, and severity levels of deficiencies.

3. Equity Principles

In addition to determining the appropriate relative weights, HUD also took into consideration several issues concerning equity between properties: *Proportionality*. The scoring methodology includes an important control, which does not allow any sub-area scores to be negative. If a sub-area, such as the building exterior for a given building, has so many deficiencies that the sub-area score is negative, the score is set to zero. This control mechanism ensures that no single building or dwelling unit can affect the overall score more than its proportionate share of the whole.

Configuration of property. The scoring methodology takes into account that properties have different numbers of units in buildings. To fairly score properties with different numbers of units in buildings, the area scores are calculated for building exteriors and systems by using weighted averages of the sub-area scores, where the weights are based on the number of units in each building.

Differences between properties. The scoring methodology also takes into account that properties have different features and amenities. To ensure that the overall score reflects only items are present to be inspected, weights to calculate area and property scores are adjusted depending on how many items are there to be inspected.

4. Deficiency Definitions

During a physical inspection of a property, the inspector looks for deficiencies for each inspectable item within the inspectable areas, such as the walls (item) of a dwelling unit (area). A specific criticality level is assigned to each deficiency. The criticality level reflects the importance of the deficiency relative to all deficiencies for the item. One of three severity levels is also assigned based on the observed condition.

The REAC's "Dictionary of Deficiency Definitions" specifically defines the three levels of severity: severe, major, and minor. As noted earlier, this dictionary is found in Appendix 2 to this notice, and is also available on the REAC Internet Site.

5. Health and Safety Deficiencies

The REAC physical inspection emphasizes health and safety (H&S) deficiencies because of their crucial importance to the well-being of residents. H&S deficiencies can substantially reduce the overall property

score. As noted earlier, the H&S deficiencies are highlighted by adding a letter to the numeric score. Letters to the numeric score are added as follows:

- If there are no H&S deficiencies, add a;
- If there are H&S deficiencies that are not life-threatening (NLT), add b; and
- If there are exigent H&S deficiencies that are life threatening (LT), i.e., calling for immediate attention or remedy—or fire safety H&S deficiencies, add c.

Appendix 1 lists all H&S deficiencies with an "LT" designation for exigent/fire safety and "NLT" for non-life threatening deficiencies.

To ensure prompt correction of H&S deficiencies, the inspector gives the property representative the list of every observed exigent/fire safety H&S deficiency before leaving the site. The property representative acknowledges receipt of the deficiency report by signature. The inspector also transmits the deficiency report to HUD not later than the morning after completing the inspection. HUD sends to all PHAS inspection reports that summarize the H&S deficiencies recorded by the inspector. These reports clearly show:

- The number of H&S deficiencies (exigent/fire safety and non-life threatening) that the inspector observed;
- All observed smoke detector deficiencies; and
- A projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units.

If there are smoke detector deficiencies, the physical condition score will include an asterisk. However, problems with smoke detectors do not currently affect the overall score. When there is an asterisk indicating the property has at least one smoke detector deficiency, that part of the score may be identified as "risk." For example, "93a, risk" for 93a* and "71c, risk" for 71c*.

There are six distinct letter grade combinations: a, a*, b, b*, c and c*. For example:

- A score of 90c* means that the property contains at least one exigent/fire safety H&S deficiency to be corrected, including some smoke detector; deficiencies, but is otherwise in excellent condition.
- A score of 55a means that the property is in poor condition, even though there are no H&S deficiencies; and
- A property in excellent physical condition with no H&S deficiencies would have a score of 90a to 100a.

6. Scoring Process Elements

The physical condition scoring process is based on three elements within a property:

- Inspectable areas;
- Inspectable items; and
- Observed deficiencies.

7. Scoring as Weighted Averages

The score for a property is the weighted average of area scores, with the area weights adjusted to take into account how many of an area's inspectable items are actually present to be inspected.

The area scores are calculated by deriving weighted averages of sub-area scores over buildings or dwelling units as appropriate.

The sub-area scores are calculated by deducting points for deficiencies, based on criticality and severity levels. (Sub-area scores may not be less than zero.) Points are also deducted for H&S deficiencies.

8. Essential Weights and Levels

The process of scoring a property's physical condition depends on the weights, levels, and associated values of several quantities:

- Weights for inspectable areas (5 areas);
- Weights for inspectable items within areas (8 to 17 per area);
- Criticality levels and their associated values for the possible deficiencies within items inspected;
- Severity levels and their associated values for deficiencies; and
- Health and safety deductions (exigent/fire safety and non-life threatening) for site, buildings, and dwelling units.

9. Normalized Area Weights

A property's overall physical condition score is a weighted average of area scores. Approximate relative weights appeared in the PHAS final rule, published on September 1, 1998 (see 63 FR 46596, pages 46598–46599):

Area	Weight (percent)
Site	15
Building exterior	15
Building systems	20
Common areas	15
Dwelling units	35

These weights are assigned if all inspectable items are present for each area for each building and unit. Typically, some areas are missing a number of inspectable items for some or all buildings or units. For example, common areas may be missing in some buildings. When items are missing for

an area, the area weight is reduced to reflect the missing item weights and then all area weights are "normalized" so that they again add up to 100%. As an example, if there were no common areas, the weights of the other four areas would be reduced to a total of 85%. Each area's weight then would be divided by 0.85, resulting in normalized weights of 17.6%, 17.6%, 23.5%, 0% and 41.2% for site, building exterior, building systems, common areas and units, respectively. These new weights add to 100%.

10. Site, Unit and Sub-Area Scores

These are the steps to arrive at site, unit and sub-area scores for a site, building, or unit:

Step 1: calculate an "initial proportionate score"—the difference between the possible points for the site, a building sub-area, or a unit and the deductions associated with the deficiencies recorded. The number of possible points is the total of the inspectable item weights, ignoring the H&S item, for the site, or a building sub-area, or unit.

Step 2: calculate the deduction for an observed deficiency by multiplying the relevant item weight by the criticality value and by the severity value.

Step 3: in a similar manner, reduce the scores for any health and safety (H&S) deficiencies observed, including those in the H&S item and those in other non-H&S items. (The item weight for deficiencies included in the H&S item is equal to the largest weight among the items present.) At this point, the control to prevent negative scores is applied. Thus, no one building or unit may affect an area score more than its proportionate share would justify.

Step 4: normalize the resulting proportionate scores to scores based on 100 points by dividing by the total of weights of items present to be inspected, other than the H&S item.

11. Area Scores

Within each area involving either multiple buildings or units, the area score is a weighted average of the building sub-area scores or unit scores. To calculate these weighted averages, follow these guidelines:

Dwelling units: the area score is the weighted average of sub-area scores for each unit, weighted by the total of item weights present to be inspected in each unit.

Common areas: like the dwelling unit score, the area score for common areas is the weighted average of sub-area common area scores weighted by the total weights for items inspected in the common areas for each building.

Building exteriors or building systems: the area scores for building exteriors and building systems are weighted averages of sub-area scores. The weights are the product of the total weights for items, ignoring the H&S item, inspected for each building exterior or systems times the total number of units for each building. (Note: the total number of units is all units, not just units inspected.)

12. Overall Property Score

To calculate the overall property score, the normalized area weights are applied to the area scores.

13. Possible Points

Normalized area weights reflect both the initial weights and the relative weights between areas of inspectable items actually present. For reporting purposes, normalized weights are presented as the maximum point contributions for each of the five inspectable areas. In the Physical Inspection Report, sent to all PHAs, the following items are listed:

- Normalized weights as the "possible points" by area;
- The area scores, taking into account the points deducted for observed deficiencies;
- The deductions for H&S for site, buildings and units, where H&S deductions for buildings are combined for exteriors, systems and common areas; and
- The overall property score.

The Physical Inspection Report allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the H&S deficiencies.

14. Examples of Physical Condition Score Calculations

To illustrate how physical condition scores are calculated, three examples are provided below.

Example #1: Example #1 illustrates how the score for a sub-area is calculated based on the following features:

#1a. Ignoring the H&S item, the other seven items have a total weight of 100%, as shown in Appendix 1. If the building had no fire escapes, an item with a nominal weight of 16.7%, then the total item weight for the remaining non-H&S items would be 83.3%, which is then the base (83.3 points) from which deductions are made to create the "initial proportionate score" as described, above, under *Sub-Area Scores*.

#1b. Assume damaged vents were found in the roof. The criticality level for this deficiency is provided in Appendix 1 as a 4, which has a value of 3.00 as given, above, under *Definitions*. If, based on the Dictionary of Deficiency Definitions (Appendix 2), it is determined that the damaged vents seen are minor deficiencies, then the amount of points

deducted is the item weight (16.7) times the criticality value (3.00), times the severity value (0.25), which equals 12.5 points.

#1c. If this is the only deficiency observed, then the initial proportionate score for this sub-area would be $83.3 - 12.5$ or 70.8 points.

#1d. Additional deficiencies or H&S deficiencies (calculated in the same manner) would further decrease the sub-area score and if the score dropped below zero, then it would be changed to zero.

#1e. The initial proportionate sub-area score is then normalized to a 100 point basis by dividing by the total of the non-H&S item weights (0.833), which would create the final score of $(70.8)/(0.833) = 85.0$

Example #2: Example #2 illustrates how the score for an area is calculated based on the following features:

#2a. Consider a property with 2 buildings with the following characteristics:

- Building #1 (from Example #1, above):
 - 10 units
 - 83.3% of the weight for the items that were present in building exterior
 - Building exterior score is 85 points
- Building #2:
 - 20 units
 - 100% of the weight for the items that were present in building exterior
 - Building exterior score is 70 points

#2b. The building exterior score for the building exterior area is the weighted average of the individual scores. Each building exterior score is weighted by the number of units and the percent of the weight for items present in the building exterior.

#2c. The scores for buildings #1 and #2, above, are calculated using the following formula: Building Exterior Score = sum of [(Building score) times (Building weight divided by the sum of Building weights)]

- Building #1 weight: $[(10 \text{ units}) * (83.3\% \text{ weight})] = 8.33$.
- Building #2 weight: $[(20 \text{ units}) * (100\% \text{ weight})] = 20$.
- Total weight = $8.33 + 20$, or 28.33.
- Building exterior score

$$= (85 \text{ points}) * (8.33/28.33) + (70 \text{ points}) * (20/28.33)$$

$$= 25.0 + 49.4$$

$$= 74.4$$

Example #3: Example #3 illustrates how the score for a property is calculated based on the following:

#3a. Consider a property with the following characteristics:

- Site:
 - Score: 90 points
 - 100% of weight of items present
 - Nominal weight: 15%
- Building Exteriors (from example #2, above):

Score: 74 points
—92% of weight of items present
—Nominal weight: 15%

- Building Systems:
 - Score: 70 points
 - 80% of weight of items present
 - Nominal weight: 20%
- Common Areas:
 - Score: 60 points
 - 30% of weight of items present
 - Nominal weight: 15%

- Dwelling Units:
- Score: 80 points
- 80% of weight of items present
- Nominal weight: 35%

#3b. First, adjust the area weights for each area. Multiply the weight of items present by the nominal weight for each area and add the total:

- Site: $15 \times 100\% = 15$.
- Building Exteriors: $15 \times 92\% = 13.8$.
- Building Systems: $20 \times 80\% = 16.0$.
- Common Areas: $15 \times 30\% = 4.5$
- Dwelling Units: $35 \times 80\% = 28.0$.
- Total: = 77.3.

#3c. Adjust the area weights to “normalize” so that they add to 100. Divide each adjusted area weight by the total and multiply by 100 (this also results in the maximum possible points reported for each area):

- Site: $(15/77.3) \times 100 = 19.4$.
- Building Exteriors: $(13.8/77.3) \times 100 = 17.9$.
- Building Systems: $(16/77.3) \times 100 = 20.7$.
- Common Areas: $(4.5/77.3) \times 100 = 5.8$.
- Dwelling Units: $(28/77.3) \times 100 = 36.2$.

#3d. Multiply the new “normalized” weights by the area scores, above, divide by 100, and add the results:

- Site: $19.4 \times 90/100 = 17.5$ points.
- Building Exteriors: $17.9 \times 74/100 = 13.2$ points.
- Building Systems: $20.7 \times 70/100 = 14.5$ points.
- Common Areas: $5.8 \times 60/100 = 3.5$ points.
- Dwelling Units: $36.2 \times 80/100 = 29.0$ points.
- Total Property Score: = 77.6 points .

15. Computing the PHAS Overall Physical Inspection Score

The physical inspection score for the PHAS for a PHA is the weighted average of the PHA's individual project physical inspection scores, where the weights are the number of units in each project divided by the total number of units in all projects for the PHA.

Example:

Project 1 has a score of 60 and has 100 units

Project 2 has a score of 80 and has 900 units.

The overall PHAS score is computed as follows:

Score

$$= [60 \times 100 / (100 + 900)] + [80 \times 900 / (100 + 900)]$$

$$= 6 + 72$$

$$= 78$$

16. Inspection Summary Report

Appendix 3 includes an inspection summary report which provides an example of the content and structure of the information sent to PHAs.

Dated: May 6, 1999

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

BILLING CODE 4210-32-P

Area:Site

	Nominal	Criticality	Severity	
Inspectable Item	Item Weight	Observable Deficiency	Level	MI MA SE H&S
Fencing and Retaining Walls	12.5%	Damaged or Missing Gates	4	X X NLT
	12.5%	Damaged/Falling/Leaning	2	X X NLT
	12.5%	Holes	3	X X NLT
	12.5%	Missing Sections	3	X X NLT
Grounds	12.5%	Erosion Areas	4	X X NLT
	12.5%	Overgrown/Penetrating Vegetation	3	X X
	12.5%	Ponding/Site Drainage	4	X X X
	12.5%	Rutting	2	X X
Health & Safety	12.5%	Air Quality - Sewer Odor Detected	3	X NLT
	12.5%	Electrical Hazards - Exposed Wires/Open Panels	5	X LT
	12.5%	Flammable Materials - Improperly Stored	3	X NLT
	12.5%	Garbage and Debris - Outdoors	3	X NLT
	12.5%	Hazards - Other	3	X NLT
	12.5%	Hazards - Sharp Edges	3	X NLT
	12.5%	Hazards - Tripping	3	X NLT
	12.5%	Infestation - Insects	3	X NLT
	12.5%	Infestation - Rats/Mice/Vermin	3	X NLT
Lighting	8.0%	Broken Fixtures	4	X X
	8.0%	Missing/Broken Bulbs	4	X X
Mailboxes/Project Signs	1.0%	Mailbox Missing/Damaged	2	X X
	1.0%	Signs Missing/Damaged	2	X X
Market Appeal	8.0%	Graffiti	4	X X X
	8.0%	Litter	4	X
Parking Lots/Driveways/Roads	8.0%	Cracks	3	X X
	8.0%	Ponding	4	X X X
	8.0%	Potholes/Loose Material	4	X X X
	8.0%	Settlement/Heaving	4	X X X
Play Areas and Equipment	12.5%	Damaged/Broken Equipment	3	X X X NLT
	12.5%	Deteriorated Play Area Surface	3	X X X
Refuse Disposal	12.5%	Broken/Damaged Enclosure	3	X X
	12.5%	Inadequate Outside Storage Space	3	X X
Storm Drainage	12.5%	Damaged/Broken/Cracked	4	X X
	12.5%	Debris/Obstruction/Sediment	5	X X
Walkways/Stairs	12.5%	Broken/Missing Hand Railing	3	X NLT
	12.5%	Broken/Missing Steps	3	X NLT
	12.5%	Cracks/Settlement/Heaving	3	X X
	12.5%	Spalling	3	X X
Note:1.) Nominal item weight assumes that all items for the Site are present. Item weights would be adjusted accordingly when items are not applicable (N/A)				
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 12.5%				
3.) "X" in the severity column indicates which severity levels are applicable.				
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.				
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)				

Appendix 1 - Item Weights and Criticality Levels

Area: Building Exterior

	Nominal		Criticality	Severity			
Inspectable Item	Item Weight	Observable Deficiency	Level	MI	MA	SE	H&S
Doors	16.0%	Broken/Missing Glazing/Glass	4	X		X	NLT
	16.0%	Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	16.0%	Damaged Hardware/Locks	3	X	X	X	
	16.0%	Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	16.0%	Damaged/Missing Screen/Storm/Security Door	3	X	X	X	NLT
	16.0%	Deteriorated/Missing Caulking/Seals	4	X	X	X	
	16.0%	Missing Door	5			X	
Fire Escapes	16.0%	Blocked Egress/Ladders	5			X	LT
	16.0%	Visibly Missing Components	5			X	LT
Foundations	16.0%	Cracks/Gaps	5	X	X	X	
	16.0%	Spalling/Exposed Rebar	4	X	X	X	
Health and Safety	16.0%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	16.0%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	16.0%	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	5			X	LT
	16.0%	Emergency Fire Exits - Missing Exit Signs	3			X	NLT
	16.0%	Flammable Materials - Improperly Stored	3			X	NLT
	16.0%	Garbage and Debris - Indoors	3			X	NLT
	16.0%	Garbage and Debris - Outdoors	3			X	NLT
	16.0%	Hazards - Other	3			X	NLT
	16.0%	Hazards - Sharp Edges	3			X	NLT
	16.0%	Hazards - Tripping	3			X	NLT
	16.0%	Infestation - Insects	3			X	NLT
	16.0%	Infestation - Rats/Mice/Vermin	3			X	NLT
Lighting	10.0%	Broken Fixtures	4		X	X	
	10.0%	Missing/Broken Bulbs	4		X	X	
Roofs	16.0%	Damaged Soffits/Fascia	4	X		X	
	16.0%	Damaged Vents	4	X		X	
	16.0%	Damaged/Clogged Drains	5		X	X	
	16.0%	Damaged/Torn Membrane/Missing Ballast	5		X	X	
	16.0%	Missing/Damaged Components from Downspout/Gutter	3	X		X	
	16.0%	Missing/Damaged Shingles	5		X	X	
	16.0%	Ponding	4			X	
Walls	13.0%	Cracks/Gaps	5	X	X	X	
	13.0%	Damaged Chimneys	4		X	X	NLT
	13.0%	Missing/Damaged Caulking/Mortar	4	X	X		
	13.0%	Missing Pieces/Holes/Spalling	4		X	X	
	13.0%	Stained/Peeling/Needs Paint	3	X	X		
Windows	13.0%	Broken/Missing/Cracked Panes	3	X		X	NLT
	13.0%	Damaged Sills/Frames/Lintels/Trim	5		X	X	
	13.0%	Damaged/Missing Screens	2	X			
	13.0%	Missing/Deteriorated Caulking/Glazing Compound	5	X	X	X	
	13.0%	Peeling/Needs Paint	2	X			
	13.0%	Security Bars Prevent Ingress/Egress	5			X	LT

Note: 1.) Nominal item weight assumes that all items for the Building Exterior are present. Item weights would be adjusted accordingly when items are not applicable (N/A)

2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 16.0%

3.) "X" in the severity column indicates which severity levels are applicable.

4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.

5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedv.)

Appendix 1 - Item Weights and Criticality Levels

Area: Building Systems

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
Domestic Water	15.5%	Central Hot Water Supply Inoperable	5			X	NLT
	15.5%	Leaking Central Water Supply	4			X	
	15.5%	Misaligned Ventilation System	5			X	LT
	15.5%	Missing Pressure Relief Valve	5			X	NLT
	15.5%	Rust/Corrosion on Heater Chimney	2			X	NLT
		Rust/Corrosion-Central Water Components	3		X	X	
	15.5%	Water Supply Inoperable	5			X	NLT
Electrical System	15.5%	Blocked Access/Improper Storage	3			X	NLT
	15.5%	Burnt Breakers	4			X	NLT
	15.5%	Evidence of Leaks/Corrosion	5			X	NLT
	15.5%	Frayed Wiring	5			X	
	15.5%	Missing Breakers	5			X	LT
	15.5%	Missing Covers	5			X	LT
Elevators	5.0%	Not Operable	5			X	NLT
Emergency Power	2.0%	Auxiliary Lighting Inoperable	5			X	
	2.0%	Run-Up Records/Documentation Not Available	4		X	X	
Exhaust System	15.5%	Roof Exhaust Fan Inoperable	3			X	
Fire Protection	15.5%	Missing (Sprinkler Head)	5			X	NLT
	15.5%	Missing/Damaged/Expired Extinguishers	5			X	LT
Health & Safety	15.5%	Air Quality - Mold and/or Mildew Observed	3			X	NLT
	15.5%	Air Quality - Propane/Nat'l Gas/Methane Gas Detected	5			X	LT
	15.5%	Air Quality - Sewer Odor Detected	3			X	NLT
	15.5%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	15.5%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	15.5%	Elevator - Tripping	3			X	NLT
	15.5%	Flammable Materials - Improperly Stored	3			X	NLT
	15.5%	Garbage and Debris - Indoors	3			X	NLT
	15.5%	Garbage and Debris - Outdoors	3			X	NLT
	15.5%	Hazards - Other	3			X	NLT
	15.5%	Hazards - Sharp Edges	3			X	NLT
	15.5%	Hazards - Tripping	3			X	NLT
	15.5%	Infestation - Insects	3			X	NLT
	15.5%	Infestation - Rats/Mice/Vermin	3			X	NLT
HVAC	15.5%	Boiler/Pump Leaks	4			X	
	15.5%	Fuel Supply Leaks	4			X	NLT
	15.5%	Gas Fired Unit-Missing/Misaligned Chimney	5			X	LT
	15.5%	General Rust/Corrosion	2		X	X	NLT
Sanitary System	15.5%	Broken/Leaking/Clogged Pipes or Drains	5			X	NLT
	15.5%	Missing Drain/Cleanout/Manhole Covers	3		X	X	

Note:1.) Nominal item weight assumes that all items for the Building System are present. Item weights would be adjusted accordingly when items are not applicable (N/A)

2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 15.5%

3.) "X" in the severity column indicates which severity levels are applicable.

4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.

5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI MA SE			H&S
Basement/Garage/Carport	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	3	X	X	X	
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Storm/Security Door	4	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	5			X	
	5.0%	Doors - Missing Door	4	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
Closet/Utility/Mechanical	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Storm/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	NLT
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
Community Room	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	NLT
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Day Care	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Halls/Corridors/Stairs	10.0%	Ceiling - Bulging/Buckling	4			X	
		Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	Graffiti	4	X	X	X	
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity			H&S
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Mailbox Missing/Damaged	2	X		X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Health & Safety	10.0%	Air Quality - Mold and/or Mildew Observed	3			X	NLT
	10.0%	Air Quality - Propane/Nat'l Gas/Methane Gas Detected	5			X	LT
	10.0%	Air Quality - Sewer Odor Detected	3			X	NLT
	10.0%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	10.0%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	10.0%	Flammable Materials - Improperly Stored	3			X	NLT
	10.0%	Garbage and Debris - Indoors	3			X	NLT
	10.0%	Garbage and Debris - Outdoors	3			X	NLT
	10.0%	Hazards - Other	3			X	NLT
	10.0%	Hazards - Sharp Edges	3			X	NLT
	10.0%	Hazards - Tripping	3			X	NLT
	10.0%	Infestation - Insects	3			X	NLT
	10.0%	Infestation - Rats/Mice/Vermin	3			X	NLT
Kitchen	10.0%	Cabinets - Missing/Damaged	2	X	X	X	
	10.0%	Call for Aid - Inoperable	3			X	NLT
	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Countertops - Missing/Damaged	2	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	10.0%	Dishwasher/Garbage Disposal - Inoperable	2		X		
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Exhaust Sys.-Excessive Grease/Inoperable	2	X		X	NLT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	GFI - Inoperable	5			X	NLT
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	10.0%	Plumbing - Clogged Drains	4	X		X	NLT
	10.0%	Plumbing - Leaking Faucet/Pipes	3	X		X	NLT
	10.0%	Range/Stove - Missing/Damaged/Inoperable	3	X		X	
	10.0%	Range Hood /Exhaust Fans - Excessive Grease/Inoperable	2	X		X	
	10.0%	Refrigerator - Missing/Damaged/Inoperable	3	X		X	
	10.0%	Sink - Damaged/Missing	5	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Laundry Room	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Storm/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Dryer Vent Missing/Damaged/Inoperable	3			X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	GFI - Inoperable	5			X	NLT
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality Level	Severity			H&S
	Item Weight			MI	MA	SE	
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Lobby	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5				LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Office	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Storm/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Other Community Spaces	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Patio/Porch/Balcony	5.0%	Baluster/Side Railing Damaged	3			X	
	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Pools and Related Structure	5.0%	Fencing - Damaged/Not Intact	5			X	
	5.0%	Pool - Not Operational	2			X	
Restrooms/Pool Structures	5.0%	Call for Aid - Inoperable	3			X	NLT
	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	GFI - Inoperable	5			X	NLT
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lavatory Sink - Damaged/Missing	3	X		X	NLT
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	5.0%	Plumbing - Clogged Drains	5	X		X	NLT
	5.0%	Plumbing - Leaking Faucet/Pipes	4	X		X	NLT
	5.0%	Restroom Cabinet - Damaged/Missing	2	X		X	
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Shower/Tub - Damaged/Missing	4		X	X	
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs - Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Ventilation/Exhaust System - Inoperable	4			X	
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Water Closet - Damaged/Clogged/Missing	5		X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Storage	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	

Appendix 1 - Item Weights and Criticality Levels

Area: Common Area

	Nominal		Criticality	Severity			
Inspectable Item	Item Weight	Observable Deficiency	Level	MI	MA	SE	H&S
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Trash Collection Areas	5.0%	Chutes Damaged/Missing Components	3		X	X	
Note:1.) Nominal item weight assumes that all items for the Common Area are present. Item weights would be adjusted accordingly when items are not applicable (N/A)							
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 10.0%							
3.) "X" in the severity column indicates which severity levels are applicable.							
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.							
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)							

Appendix 1 - Item Weights and Criticality Levels

Area: Unit

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
Bathroom	15.0%	Bathroom Cabinets - Damaged/Missing	2	X		X	
	15.0%	Lavatory Sink - Damaged/Missing	3	X		X	NLT
	15.0%	Plumbing - Clogged Drains	5	X		X	NLT
	15.0%	Plumbing - Leaking Faucet/Pipes	4	X		X	NLT
	15.0%	Shower/Tub - Damaged/Missing	4		X	X	NLT
	15.0%	Ventilation/Exhaust System - Inoperable	4			X	
	15.0%	Water Closet/Toilet - Damaged/Clogged/Missing	5		X	X	NLT
Call-for-Aid	2.0%	Inoperable	3			X	NLT
Ceiling	4.5%	Bulging/Buckling	4			X	
	4.5%	Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	4.5%	Needs Paint	1	X	X		
	4.5%	Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
Doors	4.5%	Broken/Missing Glazing/Glass	4	X		X	NLT
	4.5%	Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	4.5%	Damaged Hardware/Locks	3	X	X	X	
	4.5%	Damaged Surface - Holes/Paint/Rusting	3	X	X	X	
	4.5%	Damaged/Missing Screen/Storm/Security Door	3	X	X	X	NLT
	4.5%	Deteriorated/Missing Seals (Entry Only)	4			X	
	4.5%	Missing Door	5	X	X	X	NLT
Electrical System	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Burnt Breakers	4			X	NLT
	10.0%	Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Frayed Wiring	5			X	
	10.0%	GFI - Inoperable	5			X	NLT
	10.0%	Missing Breakers	5			X	LT
	10.0%	Missing Covers	5			X	LT
Floors	4.5%	Bulging/Buckling	4			X	
	4.5%	Floor Covering Damage	4	X	X	X	
	4.5%	Missing Flooring	4	X	X	X	
	4.5%	Needs Paint	1	X	X		
	4.5%	Rot/Deteriorated Subfloor	4		X	X	
	4.5%	Water Stains/Water Damage/Mold/Mildew	2		X	X	
Health & Safety	15.0%	Air Quality - Mold and/or Mildew Observed	3			X	NLT
	15.0%	Air Quality - Sewer Odor Detected	3			X	NLT
	15.0%	Air Quality- Propane/Nat'l Gas/Methane Gas Detected	5			X	LT
	15.0%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT

Appendix 1 - Item Weights and Criticality Levels

Area: Unit

Inspectable Item	Nominal	Observable Deficiency	Criticality	Severity			H&S
	Item Weight		Level	MI	MA	SE	
	15.0%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	15.0%	Flammable Materials - Improperly Stored	3			X	NLT
	15.0%	Garbage and Debris - Indoors	3			X	NLT
	15.0%	Garbage and Debris - Outdoors	3			X	NLT
	15.0%	Hazards - Other	3			X	NLT
	15.0%	Hazards - Sharp Edges	3			X	NLT
	15.0%	Hazards - Tripping	3			X	NLT
	15.0%	Infestation - Insects	3			X	NLT
	15.0%	Infestation - Rats/Mice/Vermin	3			X	NLT
Hot Water Heater	10.0%	Gas Fired Unit-Missing/Misaligned Chimney	5			X	LT
	10.0%	Inoperable Unit/Components	5			X	NLT
	10.0%	Leaking Valves/Tanks/Pipes	4			X	
	10.0%	Pressure Relief Valve Missing	5			X	NLT
	10.0%	Rust/Corrosion	3	X	X	X	NLT
HVAC System	15.0%	Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	15.0%	Gas Fired Unit - Missing/Misalign Chimney	5			X	LT
	15.0%	Inoperable	5			X	
	15.0%	Noisy/Vibrating/Leaking	4		X		
	15.0%	Rust/Corrosion	2		X	X	
Kitchen	15.0%	Cabinets Missing/Damaged	2	X	X	X	NLT
	15.0%	Countertops Missing/Damaged	2	X	X	X	NLT
	15.0%	Dishwasher/Garbage Disposal - Inoperable	2		X		
	15.0%	Plumbing - Clogged Drains	4	X		X	NLT
	15.0%	Plumbing - Leaking Faucet/Pipes	3	X		X	NLT
	15.0%	Range Hood/Exhaust Fans - Excessive Grease/Inoperable	2	X		X	
	15.0%	Range/Stove - Missing/Damaged/Inoperable	3	X		X	
	15.0%	Refrigerator-					
	15.0%	Missing/Damaged/Inoperable	3	X		X	NLT
	15.0%	Sink - Damaged/Missing	5	X		X	NLT
Lighting	2.0%	Missing/Inoperable Fixture	4	X	X	X	NLT
Outlets/Switches	4.5%	Missing	3			X	
	4.5%	Missing/Broken Cover Plates	3	X		X	
Patio/Porch/Balcony	2.0%	Baluster/Side Railings Damaged	3			X	
Smoke Detector	0.0%	Missing/Inoperable	5			X	LT
Stairs	2.0%	Broken/Damaged/Missing Steps	3			X	NLT
	2.0%	Broken/Missing Hand Railing	3			X	NLT
Walls	4.5%	Bulging/Buckling	4			X	

Appendix 1 - Item Weights and Criticality Levels

Area: Unit

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI MA SE	H&S
	4.5%	Damaged	3	X X X	
	4.5%	Damaged/Deteriorated Trim	1	X X X	
	4.5%	Needs Paint	1	X X	
	4.5%	Water Stains/Water Damage/Mold/Mildew	2	X X X	
Windows	4.5%	Cracked/Broken/Missing Panes	3	X	X NLT
	4.5%	Damaged Window Sill	4	X X	
	4.5%	Deteriorated/Missing Caulking/Seals	5	X X X	
	4.5%	Inoperable/Not Lockable	3	X	X NLT
	4.5%	Peeling/Needs Paint	1	X	
	4.5%	Security Bars Prevent Egress	5		X LT
Note: 1.) Nominal item weight assumes that all items for the Unit are present. Item weights would be adjusted accordingly when items are not applicable (N/A)					
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 15.0%					
3.) "X" in the severity column indicates which severity levels are applicable.					
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.					
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)					

BILLING CODE 4210-32-C

Appendix 2—Dictionary of Deficiency Definitions

Site Inspectable Items

Items to inspect for "Site" are as follows:

Fencing and Retaining Walls
Grounds
Lighting
Mailboxes/Project Signs
Market Appeal
Parking Lots/Driveways/Roads
Play Areas and Equipment
Refuse Disposal
Storm Drainage
Walkways/Stairs

Fencing and Retaining Walls (Site)

A structure functioning as a boundary or barrier. An upright structure serving to enclose, divide or protect an area.

Note: This does not include swimming pool fences. Swimming Pool Fences are covered under Common Areas—Pools and Related Structures.

This inspectable item can have the following deficiencies:

Damaged or Missing Gates
Holes
Damaged/Falling/Leaning
Missing Sections

Grounds (Site)

The improved land adjacent to or surrounding the housing and related structures. This does not include land not owned or under the control of the housing provider.

This inspectable item can have the following deficiencies:

Erosion Areas
Ponding/Site Drainage
Overgrown/Penetrating Vegetation
Rutting

Lighting (Site)

System to provide illumination of the community grounds. Includes fixtures, lamps, stanchions, poles, supports, and electrical supply.

This inspectable item can have the following deficiencies:

Broken Fixtures
Missing/Broken Bulbs
Mailboxes/Project Signs (Site)

Mailbox is a public container where mail is deposited for distribution and collection. This does not include mailboxes owned and maintained by the US Postal Service, such as the "Blue Boxes."

Project signs are boards, posters, or placards displayed in a public place to advertise, impart information, or give directions. This does not include signs owned and maintained by the city.

This inspectable item can have the following deficiencies:

Mailbox Missing/Damaged
Signs Missing/Damaged
Market Appeal (Site)

Evaluate only those areas or structures that are under the control of the housing provider.

This inspectable item can have the following deficiencies:

Graffiti
Litter

Parking Lots/Driveways/Roads (Site)

An area for parking motorized vehicles begins at the curbside and includes all parking lots, driveways or roads within the property lines that are under the control of the housing provider.

This inspectable item can have the following deficiencies:

Cracks
Potholes/Loose Material
Ponding
Settlement/Heaving

Play Areas and Equipment (Site)

An outdoor area set aside for recreation or play, especially one containing equipment such as seesaws and swings.

This inspectable item can have the following deficiencies:

Damaged/Broken Equipment
Deteriorated Play Area Surface
Refuse Disposal (Site)

Collection areas for trash/garbage common pick-up.

This inspectable item can have the following deficiencies:

Broken/Damaged Enclosure
Inadequate Outside Storage Space
Storm Drainage (Site)

System used to collect and dispose of surface runoff water through the use of culverts, underground structures, or natural drainage features, e.g., swales, ditches, etc.

This inspectable item can have the following deficiencies:

Damaged/Broken/Cracked
Debris/Obstruction/Sediment
Walkways/Stairs (Site)

Passages for walking and the structures that allow for changes in vertical orientation.

This inspectable item can have the following deficiencies:

Cracks/Settlement/Heaving
Spalling
Broken/Missing Hand Railing

Damaged or Missing Gates (Fencing and Retaining Walls)

Gate structure is damaged or missing and does not prevent passage.

This does not include gates for swimming pool fences. Gates for swimming pool fences are covered under Common Areas—Pools and Related Structures.

Note: Deficiency level depends on the fence's purpose. Perimeter/Security Fences

are assessed at a higher level than interior fences.

Severity Defined

Minor: N/A.

Major: Absence or damage to an interior fence gate which renders a gate inoperable/ineffective.

OR

Damage to a perimeter or a security fence gate that is still operational.

Severe: Absence or damage to a perimeter or security gate which renders the gate inoperable/ineffective and potentially compromises safety and/or security.

Damaged/Falling/Leaning (Fencing and Retaining Walls)

Structure is rusted, deteriorated, uprooted presents threat to security and/or health and safety.

Note: Deficiency level depends on the fence's purpose. Perimeter/Security Fences are assessed at a higher level than interior fences.

Severity Defined

Minor: N/A.

Major: An interior fence is damaged so that it does not satisfy its designed purpose.

OR

A perimeter/security fence and/or a retaining wall shows signs of deterioration, but still serves its designed purpose and presents no security/safety risk.

Severe: A perimeter/security fence and/or a retaining wall is damaged to the point that it does not satisfy its designed purpose.

Holes (Fencing and Retaining Walls)

An opening or penetration.

Note: Some fences are not designed to keep intruders out or children in such as rail fences, and these type of fences should not be evaluated for holes.

Severity Defined

Minor: Hole is smaller than 6" x 6" piece of paper.

Major: N/A.

Severe: Hole is larger than 6" x 6" which allows passage of animals and can pose a threat to the safety of children.

Missing Sections (Fencing and Retaining Walls)

Structure does not present an obstacle against intrusion or egress—damaged by the destruction or removal of section.

Note: Deficiency level depends on the fence's purpose. Perimeter/Security fences are assessed at a higher level than interior fences.

Severity Defined

Minor: An interior fence has section missing.

Major: N/A.

Severe: A perimeter/security fence has a section missing which compromises safety/security.

Erosion Areas (Grounds)

An area subjected to natural processes, such as weathering or gravity, by which material is moved on the earth's surface.

Note: This does not include erosion from a defined storm drainage system or in a play

area. This type of erosion would be covered under Site—Storm Drainage and/or Site—Play Areas and Equipment.

Severity Defined

Minor: N/A.

Major: Visible collection of surface material indicated by visible erosion deposits leading to a degraded surface condition that would likely cause water to pool in a confined area, especially next to structures, paved areas or walkways.

Severe: Extensive displacement of soil caused by runoff. Condition is responsible for visible damage or the potential failure of adjoining structures or systems, e.g., pipes, pavements, foundations, building, etc.

OR

Advanced erosion in an area which creates an unsafe pedestrian condition and/or renders an area of the grounds unusable.

Overgrown/Penetrating Vegetation (Grounds)

Plant life that has infiltrated unacceptable areas and/or has grown beyond established parameters.

Severity Defined

Minor: N/A.

Major: Vegetation is of such size or density as to make the visibility of hazards, such as broken glass, holes, etc., difficult.

OR

Plant life is in contact with an unintended surface, such as, buildings, gutters, walkways, roads, fences/walls, roofs, HVAC units, etc.

OR

Vegetation is of such size or density that it obstructs intended walkways.

Severe: Plants have rendered visible damage to a component, area, or system of the property or have made them unusable.

Ponding/Site Drainage (Grounds)

An accumulation of water and/or ice is observed to be collecting in a depressed area or has collected on the grounds for which ponding was not intended.

Note: This does not include detention/retention basins NOR ponding on paved areas. Detention/retention basins are covered under Site—Storm Drainage and ponding on paved areas is covered under Roads, Walkways, and Parking Lots/Driveways.

Severity Defined

Minor: Shallow accumulation of water (less than 3 inches).

Major: An accumulation of water (from 3 to 5 inches in depth) that affects the use of a section of the grounds; however, the grounds are generally usable.

Severe: An accumulation of more than 5 inches in depth.

OR

An accumulation that has rendered a section of the grounds unusable.

Rutting (Grounds)

A man made sunken track or groove/depression.

Note: These are typically made by a car, bike or other machine.

Severity Defined

Minor: N/A.

Major: Condition that is 6–8" wide x 3–5" deep.

Severe: Condition larger than 6–8" wide x 3–5" deep and has the potential to cause serious injury.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards").

Broken Fixtures (Lighting)

All or a portion of the site lighting system has damaged fixtures. This does not include exterior lighting, associated with the building.

Note: If a damaged fixture or fixtures presents a safety hazard, rate it as severe, and recorded manually as a health and safety concern. This includes, but is not limited to, broken fixtures that have the potential to fall on pedestrians, or fixtures that could lead to electrocution.

Severity Defined

Minor: N/A.

Major: Between 10% and 50% of the lighting fixtures surveyed are visibly broken. The broken portion of the system does not constitute an obvious safety hazard.

Severe: Over 50% of the lighting fixtures surveyed are visibly broken; or the broken portion of the system constitutes an obvious safety hazard.

Comments

Severe: If condition is a health and safety concern, it must be recorded. (Includes but not limited to "Electrical Hazards" or "Hazards").

Missing/Broken Bulbs (Lighting)

Lamps are missing or are broken from fixtures. May include incandescent, fluorescent, mercury vapor, or others.

Note: This does not include building exterior lighting. Building exterior lighting is covered under Building Exterior—Lighting.

Severity Defined

Minor: N/A.

Major: Between 10% and 50% of the fixtures surveyed have at least a single bulb missing or broken.

Severe: Over 50% of the fixtures surveyed have at least a single bulb missing or broken.

Comment

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Mailbox Missing/Damaged (Mailbox/Project Signs)

Mailbox does not function properly due to deterioration, damage, or is absent.

Severity Defined

Minor: Mailbox is damaged, vandalized, or deteriorated, but functional.

Major: N/A.

Severe: Mailbox is damaged, vandalized, or deteriorated, and as a result, is not functional.

OR

Mailbox is missing.

Signs Missing/Damaged (Mailbox/Project Signs)

Project sign is not readable due to deterioration, damage, or is absent. This does

not include locations that do not require a project sign.

Severity Defined

Minor: Sign is damaged, vandalized, or deteriorated, but readable.

Major: N/A.

Severe: Sign is damaged, vandalized, or deteriorated, and as a result, is not readable.

OR

Sign is missing.

Comments

Severe: Missing signs should only be recorded where a sign is required. This would follow from evidence that a sign has been removed through vandalism and/or neglect, etc.

Graffiti (Market Appeal)

Visual observation of a crude, (not recognizable as an art form), inscription or drawing scratched, painted or sprayed on a building surface, retaining wall, or fence so as to be seen by the public.

Note: Do not count full wall murals and similar art forms as graffiti.

Severity Defined

Minor: Visual graffiti observed in at least one location/area.

Major: Graffiti observed in 2–5 locations/areas.

Severe: Graffiti observed in 6 or more locations/areas.

Litter (Market Appeal)

Subject to disorderly accumulation of objects, especially carelessly discarded trash located on the property.

Note: Excessive litter should be judged as you would view a city park in America.

Severity Defined

Minor: N/A.

Major: Excessive litter is observed on the property.

Severe: N/A

Cracks (Parking Lots/Driveways/Roads)

Visible faults in the pavement, including longitudinal, lateral, alligator, etc. This does not include cracks from settlement/heaving.

Severity Defined

Minor: N/A.

Major: A crack which is up to 1/2" wide.

Severe: A crack larger than 1/2" or multiple cracks accompanied by surface deterioration.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.") Ponding (Parking Lots/Driveways/Roads)

A visible accumulation of water and/or ice collecting in a depression on an otherwise flat plane.

Severity Defined

Minor: Shallow accumulation of water (less than 3").

Major: An accumulation of water that affects the use of a section of a parking lot/driveway more than 3" in depth. Parking lot/driveway is passable.

Severe: An accumulation of water that has rendered a parking lot/driveway unusable.

Potholes/Loose Material (Parking Lots/Driveways/Roads)

A hole resulting from road surface failure; or loose, freestanding aggregate material is observed resulting from deterioration.

Severity Defined

Minor: Failure of pavement due to potholes or loose material that has not penetrated to or exposed the subsurface.

Major: Failure of pavement due to potholes or loose material that has penetrated to or exposed the subsurface.

Severe: Loose material and/or potholes that render a parking lot/driveway unusable/unpassable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Settlement/Heaving (Parking Lots/Driveways/Roads)

Pavement that sinks and/or rises due to failure of subbase materials.

Note: If there is a visible accumulation of water and/or ice collecting in the depression, record the observation under ponding.

Severity Defined

Minor: Visual indication of settlement/heaving with no visible surface cracks.

Major: Visual indication of settlement/heaving evidenced by cracks and deteriorated surface material.

Severe: Settlement/Heaving that renders a parking lot/driveway unusable/unpassable and/or creates unsafe pedestrian conditions.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged/Broken Equipment (Play Areas and Equipment)

Forcibly fractured into pieces or shattered, incomplete, inoperable, or missing.

Severity Defined

Minor: Visual estimate indicates some equipment (less than 50%) does not operate correctly or is missing but pose no safety risk.

Major: Visual estimate indicates most of the equipment (more than 50%) does not operate correctly or is missing but pose no safety risk.

Severe: Equipment poses a threat to safety capable of causing injury.

Deteriorated Play Area Surface (Play Areas and Equipment)

Damage to play area caused by cracking, heaving, settling, ponding, potholes, loose materials, erosion, rutting, etc.

Severity Defined

Minor: Up to 10% of total surveyed play area surface shows signs of deterioration.

Major: Deterioration of 10 to 50% of total surveyed play area surface.

Severe: Deterioration of more than 50% of the surveyed play area surface.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Broken/Damaged Enclosure (Refuse Disposal)

The outdoor enclosed area which serves as a trash/refuse site is broken or damaged including its walls.

Note: This does not include areas not designed as trash/refuse enclosures such as curb pick-up. Address condition of slab at parking lots/driveways/roads.

Severity Defined

Minor: N/A.

Major: A single wall or gate has holes or missing components.

Severe: A single wall or gate of the enclosure has collapsed or is leaning and in danger of falling.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Inadequate Outside Storage Space (Refuse Disposal)

Insufficient capacity for the proper storage of refuse until disposal.

Note: This does not include curb side pick-up areas.

Severity Defined

Minor: Appearance of storage area is unsightly and needs improvement, or the area surrounding the refuse storage area is impacted by the presence of unpleasant odors.

Major: N/A.

Severe: Trash cannot be stored in the designated area due to under-capacity of refuse storage.

Damaged/Broken/Cracked (Storm Drainage)

Separated into pieces. Broken, but not into parts (fractured).

Severity Defined

Minor: N/A.

Major: Visible structural damage/failure impacting the system's effectiveness. Significant visible fracture evidence by large, visible cracks.

Severe: Visible deterioration or failure of a large section yielding an inoperable system.

Debris/Obstruction/Sediment (Storm Drainage)

Partial or complete blockage by broken or collapsed pipe, infiltration of tree roots, accumulation of sediment, or other obstructions.

Severity Defined

Minor: N/A.

Major: Accumulation of debris or sediment which causes or has the estimated potential of significantly reducing the flow of storm water.

Severe: Complete blockage of the system due to accumulation of a large quantity of debris causing backups into adjacent area(s).

Broken/Missing Hand Railing (Walkways/Steps)

The hand rail is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The hand-rail for four or more stairs is completely missing or damaged, loose or otherwise unusable.

Cracks/Settlement/Heaving (Walkways/Steps)

Visible faults in the pavement, including longitudinal, lateral, alligator, etc. Pavement that sinks and/or rises due to failure of subbase materials.

Note: This does not include cracks on parking lots/driveways or roads.

Severity Defined

Minor: N/A.

Major: Evidence of cracks or other defects which do not affect traffic ability.

Severe: Cracks/hinging/tilting and/or missing sections that affect traffic ability.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Spalling (Walkways/Steps)

A concrete or masonry walkway that is flaking, chipping or crumbling, possible exposing underlying reinforcing material.

Severity Defined

Minor: Small areas, (4" × 4" or less), of walkway/stairs are affected.

Major: N/A.

Severe: Large areas, (greater than 4" × 4"), of walkway/stairs are impacted and affects traffic ability.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Building Exterior Inspectable Items

Items to inspect for "Building Exterior" are as follows:

Doors

Foundations

Roofs

Windows

Fire Escapes

Lighting

Walls

Doors (Building Exterior)

Means of access to the interior of a building or structure. Doors provide privacy, control passage, maintain security, provide fire and weather resistance. Includes entry to maintenance areas, boiler and mechanical rooms, electrical vaults, storage areas, etc.

Note: This does not include unit doors.

This inspectable item can have the following deficiencies:

Broken/Missing Glazing/Glass

Damaged Hardware/Locks

Deteriorated/Missing Caulking Seals

Damaged/Missing Screen/Storm/Security Door

Damaged Frames/Threshold/Lintels/Trim

Damaged Surface (Holes/Paint/Rusting)

Missing Door

Fire Escapes (Building Exterior)

All buildings must have acceptable fire exits. This includes both stairway access doors & external exits. These can include external fire escapes, fire towers, operable

windows on the lower floors with easy access to the ground or a back door opening onto a porch with a stairway leading to the ground.

This inspectable item can have the following deficiencies:

Blocked Egress/Ladders

Visibly Missing Components

Foundations (Building Exterior)

Lowest level structural wall or floor responsible for transferring the building's load to the appropriate footings and soil. Materials may include concrete, stone, masonry and wood.

This inspectable item can have the following deficiencies:

Cracks/Gaps

Spalling/Exposed Rebar

Lighting (Building Exterior)

System to provide illumination of building exteriors and surrounding grounds. Includes fixtures, lamps, stanchions, poles, supports, and electrical supply that are associated with the building itself.

Note: This does not include site lighting.

This inspectable item can have the following deficiencies:

Broken Fixtures

Missing/Broken Bulbs

Roofs (Building Exterior)

Roof system consists of the structural deck, weathering surface, flashing, parapet, and drainage system. They may be flat or pitched.

This inspectable item can have the following deficiencies:

Damaged/Clogged Drains

Damaged Vents

Missing/Damaged Shingles

Missing/Damaged Components from

Downspout/Gutter

Damaged Soffits/Fascia

Damaged/Torn Membrane/Missing Ballast

Ponding (Roofs)

Walls (Building Exterior)

The exterior enclosure of the building or structure. Materials for construction include concrete, masonry block, brick, stone, wood, glass block. Surface finish materials include metal, wood, vinyl, stucco.

Note: This does not include foundation walls.

This inspectable item can have the following deficiencies:

Cracks/Gaps

Missing Pieces/Holes/Spalling

Missing/Damaged Caulking/Mortar

Damaged Chimneys

Stained/Peeling/Needs Paint

Windows (Building Exterior)

Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, vinyl, etc.

Note: This does not include windows that have defects noted from inspection from inside the unit.

This inspectable item can have the following deficiencies:

Broken/Missing/Cracked Panes

Damaged Sills/Frames/Lintels/Trim

Missing/Deteriorated Caulking/Glazing Compound

Damaged/Missing Screens

Security Bars Prevent Egress

Peeling/Needs Paint

Broken/Missing Glazing/Glass (Doors)

The glass and/or compound/structure to support and hold glass or other materials within a frame are missing or broken.

Severity Defined

Minor: For one or more doors, glazing is inadequate to secure glass, but door is usable and presents no immediate security risk.

Major: N/A.

Severe: For at least one door, the operation, function, or security of the door is destroyed by the missing or broken glazing and/or glass. One door in this condition is sufficient to classify the door system as severe.

Damaged Frames/Threshold/Lintels/Trim (Doors)

The frame, header, jamb, threshold, lintels, or trim, is visibly warped, split, cracked, or broken in some manner.

Severity Defined

Minor: A single door's frame/threshold/lintel and/or trim is damaged but does not hinder door operation. The damaged door frame does not prevent door from being locked.

Major: More than one door has the minor damage defined above.

Severe: At least one door is rendered inoperable and/or unlockable due to damage to the door's frame/threshold/lintel and/or trim.

Damaged Hardware/Locks (Doors)

The attachments to a door to provide hinging, hanging, opening, closing, or security are damaged or missing. Includes locks, panic hardware, overhead door tracks, springs and pulleys, sliding door tracks and hangers, and door closures.

Severity Defined

Minor: A single door's hardware, as defined above, is damaged but does not hinder current door operation. The door functions, is lockable, and the door's panic hardware is operable.

Major: More than one building exterior door has minor damaged hardware as defined above.

Severe: A single door is rendered inoperable and/or unlockable (if locking is required) due to damage to the door's hardware.

OR

A single building exterior door's panic hardware is not operable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged Surface (Holes/Paint/Rusting) (Doors)

Damage in the door surface that may affect either the surface protection or the strength of the door, or it may compromise building security. Includes holes, peeling/cracking/no paint, or significant rust.

Severity Defined

Minor: Any one door has either: small holes (less than 1/4 inch in diameter); cracking/peeling paint; and/or the door or its components are rusting.

Major: If more than one building exterior door has minor surface damage as defined above.

OR

Any single door that has a hole or holes ranging in size from 1/4 inch up to 1 inch in diameter.

Severe: Any single door has a hole or holes larger than 1 inch in diameter, or significant peeling/cracking/no paint or rust that affects the integrity of the door surface.

Deteriorated/Missing Caulking/Seals (Doors)

Sealant and stripping designed to provide weather resistance or caulking is missing or deteriorated.

Severity Defined

Minor: For a single door, missing or deteriorated caulk is confined to small areas with no evidence of damage to the door and/or surrounding structure.

Major: For a single door, missing or deteriorated caulk is consistently evident for the majority of the door with no evidence of damage to the door and/or surrounding structure.

OR

2 or more of the doors surveyed have minor deficiencies.

Severe: For at least one door, missing or deteriorated caulking is evident along with evidence of leaks or damage to the door or surrounding structure; or more than half the total doors surveyed have minor caulking deficiencies.

OR

The seal is missing.

Missing Door (Doors)

Door is absent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: A single missing building exterior door constitutes a severe condition.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Blocked Egress/Ladders (Fire Escapes)

Any part of the fire escape, including ladders, is visibly blocked in a way that limits or restricts clear egress.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Items are stored or barriers are present such that clear egress is restricted or blocked.

Visibly Missing Components (Fire Escapes)

Any components that affect functionality of the fire escape are visibly missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Functional components are visibly missing (such as one section of a ladder is not present or a railing is missing).

Cracks/Gaps (Foundations)

Visible split in the exterior of the lowest structural wall.

Note: Cracks that show evidence of water penetration should be evaluated here.

Severity Defined

Minor: Visible hairline cracks that do not appear to provide opportunity for water penetration.

OR

Minor broken pieces from settlement (e.g., a single brick).

Major: Cracks that exceed 1/8" in width or depth. May also provide opportunities for water penetration.

OR

Large pieces, such as numerous bricks, that are separated from the wall/floor.

Severe: Large cracks or gaps visibly estimated to exceed 3/8" in width or depth possibly indicating a serious structural problem.

OR

Cracks that are the full depth of the wall and/or provide opportunity for water penetration.

OR

Wall/floor sections that are broken apart.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Spalling/Exposed Rebar (Foundations)

The concrete or masonry wall that is flaking, chipping, or crumbling possibly exposing underlying reinforcing material (rebar).

Severity Defined

Minor: Spalling is confined to areas affecting less than 10% of the foundation wall area inspected.

Major: Obvious large spalled area(s) affecting 10% to 50% of any individual foundation wall.

Severe: Obvious significant spalled area(s) affecting 50% or more of any individual foundation wall.

OR

Spalling which causes any reinforcing material (rebar or other) to be exposed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Broken Fixtures (Lighting)

All or a portion of the lighting that is associated with the building itself. This does not include lighting attached to the building utilized for purposes such as lighting the site.

Note: If a damaged fixture or fixtures presents a safety hazard, rate it as severe, and recorded manually as a health and safety concern. This includes, but is not limited to, broken fixtures that have the potential to fall on pedestrians, or fixtures that could lead to electrocution.

Severity Defined

Minor: N/A.

Major: Between 10% and 50% of the lighting fixtures surveyed are visibly broken.

The broken portion of the system does not constitute an obvious safety hazard.

Severe: Over 50% of the lighting fixtures surveyed are visibly broken; or the broken portion of the system constitutes an obvious safety hazard.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards" or "Hazards.")

Missing/Broken Bulbs (Lighting)

Lamps are missing or broken from fixtures. May include incandescent, fluorescent, mercury vapor, or others.

Note: This does not include SITE Lighting. Site Lighting is covered under Site "Lighting."

Severity Defined

Minor: N/A.

Major: Between 10% and 50% of the fixtures surveyed have at least a single bulb visibly missing or broken.

Severe: Over 50% of the fixtures surveyed have at least a single bulb visibly missing or broken.

Comments

Major: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Damaged/Clogged Drains (Roofs)

The drainage system does not effectively remove water.

Note: Generally, this deficiency applies to flat roofs. This does not include gutters and downspouts. Refer to Building Exterior—Roofs—Missing Components from Downspouts/Gutters.

Severity Defined

Minor: N/A.

Major: Debris around or in a drain is observed with no evidence of ponding observed.

OR

Drain is damaged but still functions.

Severe: Debris around or in a drain is observed with evidence of ponding observed.

OR

Damage is such that drain no longer functions.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of the severity of the condition exists.

Damaged Soffits/Fascia (Roofs)

Soffit fascia and/or associated components are damaged. May provide visible opportunity for water penetration or other damage from natural elements.

Severity Defined

Minor: Damage to soffit/fascia is visible but no obvious opportunities for water penetration are observed.

Major: N/A.

Severe: Soffits/Fascia are missing (from where required) or damaged so that water penetration is visibly possible.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of the severity of the condition exists.

Damaged Vents (Roofs)

Damaged vents on or extending through the roof surface or components are damaged and/or missing. Vents may include, but is not limited to, ridge vents, soffit vents, gable vents, plumbing vents, or gas vent.

Severity Defined

Minor: The vents are visibly damaged but do not present an obvious risk to promote subsequent roof damage.

Major: N/A.

Severe: Vents are missing or visibly damaged to the extent that subsequent roof damage is possible.

Damaged/Torn Membrane/Missing Ballast (Roofs)

Visible rip or wear in the membrane. Includes punctures, holes, cracks, blistering, and separated seams.

Note: Includes flashing.

Severity Defined

Minor: N/A.

Major: Ballast has shifted and no longer performs function.

Severe: Visible damage to the membrane with visible signs of current damage and/or leaks.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of severity of the condition exists.

Missing/Damaged Components from Downspout/Gutter (Roofs)

Components of the drainage system are visibly missing. The system includes gutters, leaders, downspouts, splashblocks and drain openings.

Note: This does not include clogged drains. Refer to Building Exterior—Roofs—Clogged Drains.

Severity Defined

Minor: Splashblocks are missing or damaged.

Major: N/A.

Severe: Drainage system components are visibly missing or damaged providing opportunities for damage to the roof, structure, exterior wall surface, interior, or surrounding grounds.

Missing/Damaged/Shingles (Roofs)

The shingles are missing or damaged which includes, but is not limited to, cracking, warping, cupping or deteriorated.

Note: A square is defined as 100 square feet.

Severity Defined

Minor: N/A.

Major: Up to 2 squares of surface material or shingles are missing.

Severe: More than 2 squares of shingles are observed to be missing from surveyed roofing areas.

Ponding (Roofs)

Evidence of areas of standing water exists.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Evidence of standing water on roof causing potential or visible damage to roof surface or underlying materials.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of the severity of the condition exists.

Cracks/Gaps (Walls)

Visible split, separation, or gap in the exterior walls.

Severity Defined

Minor: Crack that is less than 1/8 inch in width or depth.

Major: Crack that exceeds 1/8 inch in width or depth. May also provide opportunities for water penetration.

OR

Pieces, such as numerous bricks, that are separated from the wall.

Severe: Large crack or gap visibly estimated to exceed 3/8 inch in width or depth possibly indicating a serious structural problem.

OR

Crack that is the full depth of the wall and/or provides opportunity for water penetration.

OR

Wall sections that are broken apart.

Comments

Major: Request an inspection by a structural engineer if doubt about severity exists.

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Damaged Chimneys (Walls)

The chimney, including the portion extending above the roof line, has separated from the wall or has cracks, spalling, missing pieces, or broken sections.

Severity Defined

Minor: N/A.

Major: Surface of chimney is cracking, spalling, or otherwise showing visible surface damage.

Severe: Part or all of the chimney has visibly separated from the adjacent wall. Cracked or fallen pieces or sections may currently be present or there is a risk of falling pieces creating a safety hazard.

Missing Pieces/Holes/Spalling (Walls)

Deterioration, such as missing pieces, holes or spalling in the exterior wall surface. May also be attributed to rotting materials; or, concrete, stucco, or masonry wall is flaking, chipping, or crumbling.

Severity Defined

Minor: N/A.

Major: Any missing piece, such as, a single brick or section of siding, or hole.

OR

Deterioration that affects an area up to 8 1/2" x 11".

Severe: Deterioration that causes any reinforcing material (re-bar) to be exposed.

OR

More than one missing piece, such as a few bricks, or section of siding or holes that affects an area larger than 8 1/2" x 11".

OR

Any size hole that completely penetrates the exterior wall.

Comments

Major: Request an inspection by a structural engineer if doubt about severity exists.

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Missing/Damaged Caulking/Mortar (Walls)

Caulking designed to provide weather resistance or mortar is missing or deteriorated.

Note: This doesn't include caulking relative to doors and windows as they are covered in other areas. All other caulking, etc. should be addressed here.

Severity Defined

Minor: Mortar is missing around a single masonry unit.

OR

Deteriorated caulk is confined to less than 12 inches.

Major: Mortar is missing in around more than one contiguous masonry unit.

OR

Deteriorated caulking is evident in an area longer than 12 inches.

Severe: N/A.

Stained/Peeling/Needs Paint (Walls)

Paint is cracking, flaking, otherwise deteriorated. Water damage or related problems have stained the paint.

Note: This does not include walls that are not intended to have paint, such as most brick walls, etc.

Severity Defined

Minor: Visible observations estimate that less than 50% of a single building exterior wall is affected.

Major: Visible observations estimate that more than 50% of a single building exterior wall is affected.

Severe: N/A.

Broken/Missing/Cracked Panes (Windows)

Glass pane is broken, missing or cracked.

Severity Defined

Minor: Glass pane is cracked, but no sharp edges are present.

Major: N/A.

Severe: Glass pane is missing or broken.

Damaged/Missing Screens (Windows)

Screen is punctured, torn, is otherwise damaged or is missing.

Severity Defined

Minor: Screen has significant punctures, tears, is otherwise damaged or is missing.

Major: N/A.

Severe: N/A.

Damaged Sills/Frames/Lintels/Trim (Windows)

Window sills, frames, sash lintels, or trim are damaged by decay, rust, rot, corrosion, or other deterioration.

Severity Defined

Minor: N/A.

Major: Damage does not affect the window's intended operation.

Severe: Damage affects the window's intended operation.

Missing/Deteriorated Caulking/Glazing Compound (Windows)

Caulking or glazing compound to provide weather resistance is missing or deteriorated.

Note: This also includes Thermopane or insulated windows that have failed.

Severity Defined

Minor: Missing or deteriorated caulk or glazing compound is confined to small areas with no evidence of damage to the window and/or surrounding structure.

Major: Missing or deteriorated caulk or glazing compound is consistently evident for the majority of the window with no evidence of damage to the window and/or surrounding structure.

OR

2 or more of the windows surveyed have minor deficiencies.

Severe: Evidence of leaks or damage to the window or surrounding structure.

Peeling/Needs Paint (Windows)

Paint covering the window assembly/trim is cracking, flaking, or otherwise failing; or window assembly/trim is not painted or is exposed to the elements.

Note: This does not include windows that are not intended to be painted.

Severity Defined

Minor: Peeling paint and/or a window in need of paint is observed.

Major: N/A.

Severe: N/A.

Security Bars Prevent Egress (Windows)

Security bars are damaged, constructed or installed, such that egress is severely limited or impossible.

Note: This does not include windows not designed or intended for egress.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.

Deteriorated/Missing Caulking/Seals (Doors)

Sealant and stripping designed to provide weather resistance or caulking is missing or deteriorated.

Severity Defined

Minor: For a single window, missing or deteriorated caulk is confined to small areas with no evidence of damage to the door and/or surrounding structure.

Major: For a single door, missing or deteriorated caulk is consistently evident for the majority of the door with no evidence of damage to the door and/or surrounding structure.

OR

2 or more of the doors surveyed have minor deficiencies.

Severe: For at least one door missing or deteriorated caulking is evident along with evidence of leaks or damage to the door surrounding structure; or more than half of the total door surveyed have minor caulking deficiencies.

OR

The seal is missing.

Building Systems Inspectable Items

Items to inspect for "Building Systems" are as follows:

Domestic Water
Elevators
Exhaust System
HVAC
Electrical System
Emergency Power
Fire Protection
Sanitary System

Domestic Water (Building Systems)

Portion of the building system that provides potable water conditioning, heating, and distribution taking its source from outside the building and terminating in domestic plumbing fixtures. The system typically consists of water conditioners (filters and softeners), water heaters, transfer and circulating pumps, strainers, and connecting piping, fittings, valves, and supports.

Note: This does not include portion of water supply that connects to the heating and cooling system. Also, the delivery points of the system such as sinks and faucets in units or common areas.

This inspectable item can have the following deficiencies:

Central Hot Water Supply Inoperable
Misaligned Ventilation System
Rust/Corrosion on Heater Chimney
Rust/Corrosion on Central Water Components

Leaking Central Water Supply
Missing Pressure Relief Valve
Water Supply Inoperable

Electrical System (Building Systems)

Portion of the building system that safely provides electrical power throughout the building. Including equipment that provides control, protection, metering, and service.

Note: This does not include transformers or metering that belongs to the providing utility. Equipment that is part of any emergency power generating system. Terminal equipment such as receptacles, switches, or panelboards that are located in the units or common areas.

This inspectable item can have the following deficiencies:

Blocked Access/Improper Storage
Evidence of Leaks/Corrosion
Missing Breakers
Burnt Breakers
Frayed Wiring
Missing Covers

Elevators (Building Systems)

Vertical conveyance system for moving personnel, equipment, materials, household goods, etc.

This inspectable item can have the following deficiency:
Not Operable

Emergency Power (Building Systems)

Standby/backup equipment intended to supply illumination or power or both, (battery or generator set) during utility outage.

This inspectable item can have the following deficiencies:

Run-Up Records/Documentation Not Available

Exhaust System (Building Systems)

The system used to primarily exhaust stale air from the building. Primarily from the kitchen and bathroom areas.

Note: This does not include elements related to the HVAC system.

This inspectable item can have the following deficiencies:

Roof Exhaust Fans Inoperable

Fire Protection (Building Systems)

Building System designed to minimize the effects of a fire. May include the following: fire walls and doors, portable fire extinguishers, and permanent sprinkler systems.

Note: This does not include fire detection, alarm, and control devices.

This inspectable item can have the following deficiencies:

Missing Sprinkler Head
Missing/Damaged/Expired Extinguishers
HVAC (Building Systems)

Portion of the building system that provides ability to heat or cool the air within the building. Includes equipment such as boilers, burners, furnaces, fuel supply, hot water and steam distribution, and associated piping, filters, and equipment. Also includes air handling equipment and associated ventilation ducting.

This inspectable item can have the following deficiencies:

Boiler/Pump Leaks
Fuel Supply Leaks
General Rust/Corrosion
Gas Fired Unit—Missing/Misaligned Chimney

Sanitary System (Building Systems)

Portion of the building system that provides for the disposal of waste products with discharge to the local sewage system. Can include sources such as domestic plumbing fixtures, floor drains, and other area drains. Consists of floor drains and traps, collection sumps, sewage ejectors, sewage pumps, and collection piping, fittings, valves, and supports.

Note: This does not include site storm drainage. Refer to Site—Storm Drainage.

This inspectable item can have the following deficiencies:

Broken/Leaking/Clogged Pipes or Drains (Sanitary System)
Missing Drain/Cleanout/Manhole Covers
Central Hot Water Supply Inoperable (Domestic Water)

Hot water is unavailable.

Severity Defined

Minor: N/A.

Major: N/A. Severe: After running for several minutes, water from hot water taps is not warmer than room temperature.	Water Supply Inoperable (Domestic Water) Water is unavailable at unit or common area faucets.	Major: N/A. Severe: Open breaker port.
Leaking Central Water Supply (Domestic Water) Water visibly leaking from any water system component. Includes valve flanges, stems, bodies, hose bibbs or from any domestic water tank or its pipe or pipe connections. Note: This includes both hot and cold water.	Severity Defined Minor: N/A. Major: N/A. Severe: Running water is unavailable within any area of the building.	Missing Covers (Electrical System) Missing covers on any electrical device box, panel box, switch gear box, control panel, etc., where visible electrical connections are exposed.
Severity Defined Minor: N/A. Major: N/A. Severe: Water is visibly leaking.	Blocked Access/Improper Storage (Electrical System) The placing of any object that will delay or prevent access to any panelboard or main power switch.	Severity Defined Minor: N/A. Major: N/A. Severe: Cover is missing resulting in exposed visible electrical connections.
Comments Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards".)	Severity Defined Minor: N/A. Major: N/A. Severe: One or more items are placed in front of the building systems' electrical panel.	Not Operable (Elevators) Elevator will not ascend or descend. Door will not open or close. Door opens without cab being present.
Misaligned Ventilation System (Domestic Water) The ventilation system on a gas/oil fired water heater is misaligned.	Burnt Breakers (Electrical System) Breakers having carbon on the plastic body, or plastic body is melted and scarred.	Severity Defined Minor: N/A. Major: N/A. Severe: Any elevator that is either inoperable or doors open without cab present.
Severity Defined Minor: N/A. Major: N/A. Severe: Any misalignment/damaged which may cause improper or dangerous venting of exhaust gases.	Severity Defined Minor: N/A. Major: N/A. Severe: Any signs of carbon residue or breaker is melted and/or has arcing scars.	Auxiliary Lighting Inoperable (Emergency Power) Emergency lighting which provides illumination during periods of power outage.
Missing Pressure Relief Valve (Domestic Water) Pressure relief valve on central hot water heating system is not present. Note: This does not include the pipe from the PRV to the floor.	Evidence of Leaks/Corrosion (Electrical System) Liquid stains, rust marks or other signs of corrosion are found on electrical enclosures or hardware. Note: Do not address surface rust if it does not affect the condition of the electrical enclosure.	Severity Defined Minor: N/A. Major: N/A. Severe: Auxiliary lighting does not function.
Severity Defined Minor: N/A. Major: N/A. Severe: No pressure relief valve present.	Severity Defined Minor: N/A. Major: N/A. Severe: Any corrosion that affects the condition of the current carrying components. Stains and/or rust on the interior of electrical enclosures or evidence of water leaks are present in the enclosure or hardware.	Severity Defined Minor: N/A. Major: Current records (within the last 12 months) are lost but old records demonstrate proper use. Severe: No records are available.
Rust/Corrosion on Central Water Components (Domestic Water) The material condition of the equipment and/or associated piping shows evidence of flaking, discoloration, pitting or crevices.	Frayed Wiring (Electrical System) Insulation may be frayed, stripped, or removed resulting in a potentially dangerous condition. Note: This does not include any wires not intended to be insulated, such as grounding wires.	Roof Exhaust Fans Inoperable (Exhaust System) The ventilation system to exhaust kitchen and/or bathroom air is inoperable.
Severity Defined Minor: N/A. Major: Significant formations of metal oxides are visible or a noticeable pit or crevice has developed. Severe: Condition has rendered equipment and/or piping inoperable.	Severity Defined Minor: N/A. Major: N/A. Severe: Nicks, abrasions or fraying of the insulation.	Severity Defined Minor: N/A. Major: N/A. Severe: Roof exhaust fan unit is inoperable.
Rust/Corrosion on Heater Chimney (Domestic Water) The material condition of the water heater chimney shows evidence of flaking, discoloration, pitting or crevices.	Comments Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards".)	Missing Sprinkler Head (Fire Protection) Any sprinkler head connected to the central fire protection system is missing, visibly disabled, blocked, and/or capped.
Severity Defined Minor: N/A. Major: N/A. Severe: The water heater chimney shows evidence of flaking, discoloration, pitting or crevices which may result in holes, ultimately, allowing leaks of toxic gases from the chimney.	Missing Breakers (Electrical System) An open circuit breaker position in a panel-board, main panel board or other electrical box containing circuit breakers; not appropriately blanked-off.	Severity Defined Minor: N/A. Major: N/A. Severe: Any sprinkler head is missing, visibly disabled, blocked, and/or capped.
	Severity Defined Minor: N/A.	Comments Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards".)
		Missing/Damaged/Expired Extinguishers (Fire Protection) A portable fire extinguisher is not in its proper location, is damaged or the extinguisher certification has expired. Note: This includes fire hoses in fire cabinets.
		Severity Defined Minor: N/A.

Major: N/A.
Severe: Missing or damaged extinguisher, or expired extinguisher certificate is observed.

Boiler/Pump Leaks (HVAC)

Escaping of water/steam from unit casing or system piping.

Note: This does not include fuel supply leaks. See Building Systems—HVAC fuel supply leaks. Also, don't include steam escaping from pressure relief valves.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Visible leak is observed.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Include but not limited to "Hazards.")

Fuel Supply Leaks (HVAC)

There is evidence of fuel escaping from a fuel storage tank or fuel line.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any leakage of fuel from the supply tank or piping.

Gas Fired Unit—Missing/Misaligned Chimney (HVAC)

The exhaust system on a gas/oil fired unit is misaligned.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any misalignment which causes improper or dangerous venting of gases.

General Rust/Corrosion (HVAC)

The material condition of the equipment and/or associated piping/ducting shows evidence of flaking, discoloration, pitting or crevices.

Severity Defined

Minor: N/A.
Major: Significant formations of metal oxides are visible or a noticeable pit or crevice has developed.
Severe: Condition has rendered equipment and/or piping inoperable.

Broken/Leaking/Clogged Pipes or Drains (Sanitary System)

Any visible leaks in sanitary system components or visibly clogged drains.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Visible active leaks are observed within or around the system components. Standing water, puddles, or ponding have occurred which is indicative of leaks or clogged drains.

Missing Drain/Cleanout/Manhole Covers (Sanitary System)

The protective covers are not present.
Note: This also includes covers observed while walking the site.

Severity Defined

Minor: N/A.

Major: N/A.
Severe: Cover is missing.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Include but is not limited to "Air Quality", "Hazards.")

Common Areas Inspectable Items

Items to inspect for "Common Areas" are as follows:

Basement/Garage/Carport
Closet/Utility/Mechanical
Community Room
Day Care
Halls/Corridors/Stairs
Kitchen
Laundry Room
Lobby
Office
Other Community Spaces
Patio/Porch/Balcony
Pools and Related Structures
Restrooms/Pool Structures
Storage
Trash Collection Areas

Basement/Garage/Carport (Common Areas)

Basement: the lowest habitable story of a building, usually below ground level. Garage: a building or wing of a building in which to park a car. Carport: a roof projecting from the side of a building or free standing, used to shelter an automobile.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Closet/Utility/Mechanical (Common Areas)

An enclosed room or closet housing machines and/or equipment that service the building.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Community Room (Common Areas)

Meeting place used by members of a community for social, cultural, or recreational purposes.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches
Smoke Detector
Stairs/Hand Railings

Walls Damaged
Windows Damaged

Day Care (Common Area)

Place that provides daytime supervision, training, and medical services for preschool children or for the elderly.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Halls/Corridors/Stairs (Common Areas)

Passageway in a building, which organizes its rooms, apartments and staircases.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Graffiti
HVAC System Damaged
Lighting Damaged/Inoperable
Mailboxes Damaged
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Kitchen (Common Areas)

A place where food is cooked or prepared. The facilities and equipment used in preparing and serving food.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Kitchen
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Laundry Room (Common Areas)

Place where soiled clothes and linens are washed and/or dried.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Laundry Room
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Lobby (Common Area)

A foyer, hall, or waiting room at or near the entrance of a building.

This inspectable item can have the following deficiencies:

Ceiling Damaged

Doors Damaged

Floors Damaged

HVAC System Inoperable

Lighting Damaged/Inoperable

Outlets/Switches Damaged

Smoke Detector Inoperable

Stairs/Hand Railings Damaged

Walls Damaged

Windows Damaged

Office (Common Areas)

Place in which business, professional, or clerical activities are conducted.

This inspectable item can have the following deficiencies:

Ceiling Damaged

Doors Damaged

Floors Damaged

HVAC System Inoperable

Lighting Damaged/Inoperable

Outlets/Switches Damaged

Smoke Detector Inoperable

Stairs/Hand Railings Damaged

Walls Damaged

Windows Damaged

Other Community Spaces (Common Areas)

This inspectable item can have the following deficiencies:

Ceiling Damaged

Doors Damaged

Floors Damaged

HVAC System Inoperable

Lighting Damaged/Inoperable

Outlets/Switches Damaged

Smoke Detector Inoperable

Stairs/Hand Railings Damaged

Walls Damaged

Windows Damaged

Patio/Porch/Balcony (Common Areas)

Covered entrance to a building, usually with a separate roof or a recreation area that adjoins a unit.

This inspectable item can have the following deficiencies:

Ceiling Damaged

Doors Damaged

Floors Damaged

Lighting Damaged/Inoperable

Outlets/Switches Damaged

Patio/Porch/Balcony

Stairs/Hand Railings Damaged

Walls Damage

Windows Damaged

Pools and Related Structures (Common Areas)

Swimming pools and related structures including fencing, etc.

This inspectable item can have the following deficiencies:

Pool and Related Structures—Damaged/Not Operational

Restrooms/Pool Structures (Common Area)

A room equipped with a water closet or toilet, tub and/or shower, sink, cabinet(s) and/or closet. This includes locker rooms or bathhouses associated with swimming pools.

This inspectable item can have the following deficiencies:

Ceiling Damaged

Doors Damaged

Floors Damaged

HVAC System Inoperable

Lighting Damaged/Inoperable

Outlets/Switches Damaged

Restrooms

Smoke Detector Inoperable

Stairs/Hand Railings Damaged

Walls Damaged

Windows Damaged

Storage (Common Areas)

A room in which items are kept for future use.

This inspectable item can have the following deficiencies:

Ceiling Damaged

Doors Damaged

Floors Damaged

HVAC System Inoperable

Lighting Damaged/Inoperable

Outlets/Switches Damaged

Smoke Detector Inoperable

Stairs/Hand Railings Damaged

Walls Damaged

Windows Damaged

Trash Collection Areas (Common Areas)

Collection areas for trash/garbage common pick-up.

This inspectable item can have the following deficiencies:

Trash Collection Areas

Electrical—Blocked Access/Improper Storage (Common Areas)

The placing of any object that will delay or prevent access to any panelboard or main power switch.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: One or more items are placed in front of the unit's electrical panel, impeding accessibility in time of an emergency.

Electrical—Burnt Breakers (Common Areas)

Breakers having carbon on the plastic body, or plastic body is melted or scarred.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any signs of carbon residue or breaker is melted and/or has arcing scars.

Electrical—Evidence of Leaks/Corrosion (Common Areas)

Liquid stains, rust marks or other signs of corrosion are found on electrical enclosures or hardware.

Note: Do not address surface rust if it does not affect the condition of the electrical enclosure.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any corrosion that affects the condition of the current carrying components. Stains and/or rust on the interior of electrical enclosures or evidence of water leaks are present in the enclosure or hardware.

Electrical—Frayed Wiring (Common Areas)

Insulation may be frayed, stripped, or removed resulting in a potentially dangerous condition.

Note: This does not include any wires not intended to be insulated, such as grounding wires.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Nicks, abrasions or fraying of the insulation.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Electrical—Missing Breakers (Common Areas)

An open circuit breaker position in a panel-board, main panel board or other electrical box containing circuit breakers; not appropriately blanked-off.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Open breaker port.

Electrical—Missing Covers (Common Areas)

Missing covers on any electrical device box, panel box, switch gear box, control panel, etc., where visible electrical connections are exposed.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Cover is missing resulting in exposed visible electrical connections.

Ceiling—Bulging/Buckling (Common Areas)

Ceiling has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging, buckling, or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Ceiling—Holes/Missing Tiles/Panels/Cracks (Common Areas)

Punctures in the ceiling surface. May or may not penetrate completely. Panels or tiles may be missing or damaged.

Severity Defined

Minor: Small holes or missing tile/panel found in a ceiling, visually estimated at no larger than a sheet of paper (8½ x 11 inches). Hole does not fully penetrate into the area above (cannot see through it).

Major: A hole or missing tile/panel is found which is visually estimated to be larger than a sheet of paper (8½ x 11 inches) but does not fully penetrate into the area above (cannot see through it).

OR

A crack greater than ⅛" wide and a minimum of 11" long.

Severe: Any hole is found which fully penetrates into the area above (can see through the hole to upper space).

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Ceiling—Needs Paint (Common Areas)

Paint is peeling, cracking, flaking, otherwise deteriorated, or surface is not painted.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Ceiling—Water Stains/Water Damage/Mold/Mildew (Common Areas)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single ceiling, visible indication of a leak, mold, or mildew, such as a darkened area, exists over a small area (less than 4 sq. ft.). Water may or may not be evident. Visual observations estimate that less than 10% of the ceiling surface area is affected.

Major: For a single ceiling, visible indication of a leak mold or mildew, such as a darkened area, exists over a large area (more than 4 sq. ft.). Water may or may not be evident.

OR

Visual observations estimate that 10% to 50% of the ceiling area has minor damage.

Severe: Visual observations estimate that a large portion (50% of its surface area) of one ceiling has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moist areas, mold, or mildew are evident. The ceiling surface may have failed.

OR

Cases where visual observations estimate that more than 50% of the ceiling area shows minor defined signs of damage, stains, mold, or mildew.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Air Quality.")

Doors—Broken/Missing Glazing/Glass (Common Areas)

The glass and/or compound/structure to support and hold glass or other materials within a frame are missing or broken.

Severity Defined

Minor: For one or more doors, glazing is inadequate to secure glass, but door is usable and presents no immediate security risk.

Major: N/A.

Severe: For at least one door, the operation, function, or security of the door is destroyed by the missing or broken glazing and/or glass. One door in this condition is sufficient to classify the door system as severe.

Doors—Damaged Surface (Holes/Paint/Rusting) (Common Areas)

Damage in the door surface that may affect either the surface protection or the strength

of the door, or it may compromise building security or privacy. Includes holes, peeling/cracking/no paint, or significant rust.

Note: A restroom, fire door, or entry door impacted is severe.

Severity Defined

Minor: Any one door has either: small holes (less than 1/4 inch in diameter); cracking/peeling paint; and/or the door or its components are rusting.

Major: If more than one building exterior door has minor surface damage as defined above.

OR

Any single door that has a hole or holes ranging in size from 1/4 inch up to 1 inch diameter.

Severe: Any single door has a hole or holes larger than 1 inch in diameter or significant peeling/cracking/no paint or rust that affects the integrity of the door surface.

Doors—Damaged Frames/Threshold/Lintels/Trim (Common Areas)

The frame, header, jamb, threshold, lintels, or trim, is visibly warped, split, cracked, or broken in some manner.

Severity Defined

Minor: A single door's frame/threshold/lintel and/or trim is damaged but does not hinder door operation. The damaged door frame does not prevent door from being locked.

Major: More than one door has the minor damage defined above.

Severe: At least one door is rendered inoperable and/or unlockable due to damage to the door's frame/threshold/lintel and/or trim.

OR

Minor damage as defined above affects a restroom, entry, or fire door.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Doors—Damaged Hardware/Locks (Common Areas)

The attachments to a door to provide hinging, hanging, opening, closing, or security are damaged or missing. Includes locks, panic hardware, overhead door tracks, springs and pulleys, sliding door tracks and hangers, and door closures.

Severity Defined

Minor: A single door's hardware, as defined above, is damaged but does not hinder current door operation. The door functions, is lockable, and the door's panic hardware is operable.

Major: More than one door has minor damaged hardware as defined above.

Severe: A single door is rendered inoperable and/or unlockable due to damage to the door's hardware.

OR

Minor damaged as defined above affects a restroom, entry fire door.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Doors—Deteriorated/Missing Seals (Common Areas)

The seals and stripping around the door(s) designed to provide fire resistance are damaged or missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: For a single door the seals are missing.

Doors—Missing Door (Common Areas)

Door is absent.

Note: A restroom, entry or fire door impacted is severe.

Severity Defined

Minor: The missing door is not a restroom, entry, or fire door.

Major: Missing doors are not an entry, restroom, or fire door. They present no hazard and visual observation shows two doors or up to 50% of the doors are missing.

Severe: The missing door is a restroom, entry, or fire door.

OR

Visual observation estimates more than 50% of the doors are missing.

Comments

Severe: If condition is a health and safety concern it must be recorded manually. (Includes but not limited to "Hazards.")

Floors—Bulging/Buckling (Common Areas)

Floor has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging, buckling, or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Floors—Floor Covering Damaged (Common Areas)

Damage to the carpet, tiles, wood, sheet vinyl, or other floor covering.

Severity Defined

Minor: For a single floor, floor covering may have stains, surface burns, shallow cuts, small holes, tears, loose areas or exposed seams. The covering is fully functional. Visual observation estimates that less than 10% of the floor area is affected. Does not present a safety hazard.

Major: For a single floor, covering may have burn marks, cuts, tears, holes, or large sections of exposed seams in traffic areas exposing the underlying material. The covering does not present a safety hazard. Visual observations estimate that 10% to 50% of the floors are affected.

Severe: For a single floor, large sections of the covering are damaged estimated at more than 50% of the floor area.

OR

Floor covering damage that exposes the underlying material.

OR

Covering that has failed in most traffic areas.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Floors—Missing Flooring (Common Areas)

Flooring such as terrazzo, hardwood, ceramic tile or other flooring material is missing.

Severity Defined

Minor: For a single floor small holes in areas of the floor surface. Visual observations estimate less than 10% of the floors surveyed are affected. No safety problems exist due to this condition.

Major: Visual observations estimate 10% to 50% of the floors have minor holes/damage. No safety problem exists due to this condition.

Severe: Visual observations estimate more than 50% of the floors are affected by minor holes/damage; or the holes are sufficient for safety to be compromised. One concern involving compromised safety is sufficient to classify the floor system as severe.

Floors—Needs Paint (Common Areas)

For floors that are painted, paint is peeling, cracking, flaking, or otherwise deteriorated.

Note: This applies to any painted floor surface, typically concrete.

Severity Defined

Minor: For a single floor, a peeling condition exists. Up to or less than 50% of the floor is affected.

Major: For a single floor, a peeling condition exists. More than 50% of the floor is affected.

Severe: N/A.

Floors—Rot/Deteriorated Subfloor (Common Areas)

Subfloor has decayed or is decaying.

Severity Defined

Minor: N/A.

Major: Condition is slightly noticeable. Small areas of rot or spongy flooring are found. Inspection observations estimate less than 10% of the floors are affected.

Severe: Large areas of rot are readily visible. Application of weight causes noticeable deflection. Inspection observations estimate more than 10% of floors are affected.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Floors—Water Stains/Water Damage/Mold/Mildew (Common Areas)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: N/A.

Major: Visible indication of a water stain, mold, or mildew, such as darkened area, exists over a small area (4 sq. ft. or less). Water may or may not be evident.

Severe: Visual observations estimate that a large portion of floor has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, mold, moist areas and flaking are evident. The floor surface may have failed.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Air Quality," "Hazards.")

Lighting Damaged/Inoperable (Common Areas)

Lighting fixture is damaged, inoperable, or missing.

Severity Defined

Minor: N/A.

Major: The permanent lighting fixture is damaged, inoperable or missing.

Severe: N/A.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards," "Hazards.")

Outlets/Switches/Cover Plates—Missing/Broken (Common Areas)

The flush plate used to cover the opening surrounding a switch or outlet is damaged or does not exist. Switch or outlet is missing.

Severity Defined

Minor: Outlet or switch has broken cover plate which does not result in exposed wiring.

Major: N/A.

Severe: An outlet or switch is missing.

OR

A cover plate is missing or broken resulting in exposed wiring.

Smoke Detector—Missing/Inoperable (Common Areas)

Smoke detector will not activate, or is missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: A single missing or inoperable smoke detector is severe.

Stairs—Broken/Missing Hand Railing (Halls/Corridors/Stairs)

The hand rail is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The hand-rail for four or more stairs is completely missing or damaged, loose or otherwise unusable.

Stairs—Broken/Damaged/Missing Steps (Halls/Corridors/Stairs)

The horizontal tread or stair surface is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Step is broken, damaged or missing.

Mailbox Missing/Damaged (Halls/Corridors/Stairs)

Mailbox does not function properly due to deterioration, damage, or is absent.

Severity Defined

Minor: Mailbox is damaged, vandalized, or deteriorated, but functional.

Major: N/A.

Severe: Mailbox is damaged, vandalized, or deteriorated, and as a result, is not functional.

OR

Mailbox is missing.

Graffiti (Halls/Corridors/Stairs)

Visual observation of a crude, (not recognizable as an art form), inscription or drawing scratched, painted or sprayed on a building surface, retaining wall, or fence so as to be seen by the public.

Note: Do not count full wall murals and similar art forms as graffiti.

Severity Defined

Minor: Visual graffiti observed in at least one location/area.

Major: Graffiti observed in 2–5 locations/areas.

Severe: Graffiti observed in 6 or more locations/areas.

Walls—Bulging/Buckling (Common Areas)

Wall has bowed, deflected, sagged or has deviated from original vertical alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging/Buckling or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Walls—Damaged/Deteriorated Trim (Common Areas)

Cove molding, chair rail, base molding or other decorative trim is damaged or has decayed.

Severity Defined

Minor: Small areas of deterioration in the trim surfaces. Visual observations estimate that less than 10% of the wall area surveyed is affected.

Major: Large areas of deterioration in the trim surfaces. Visual observations estimate that 10% to 50% in any of the wall area surveyed is affected.

Severe: Significant areas of deterioration in the wall surfaces. Visual observations estimate that more than 50% of the wall area surveyed is affected.

Walls—Damaged (Common Areas)

Punctures in the wall surface. May or may not penetrate completely. Panels or tiles may be missing or damaged. Does not include small holes created by hanging pictures, etc.

Severity Defined

Minor: A hole missing tile/panel, or other damage found in a wall, visually estimated at no larger than 8½ x 11 inches. Hole does not fully penetrate into the adjoining room (cannot see through it).

Major: A hole missing tile/panel or other damage wall that is larger than a sheet of paper (8½ x 11).

OR

A crack greater than ⅛" in wide and a minimum of 11" long.

Severe: A hole of any size is found in one or more walls which fully penetrates into an adjoining room (can see through the hole).

OR

Two or more walls have major holes.

Walls " Needs Paint (Common Areas)

Paint is peeling, cracking, flaking, otherwise deteriorated.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Walls—Water Stains/Water Damage/Mold/Mildew (Common Areas)

Walls are not watertight. Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single wall, visible indication of a leak, mold, or mildew, such as darkened area, exists over a small area. (less than 4 sq. ft. by visual estimate). Water may or may not be evident.

Major: For a single wall, visible indication of a leak exists over a large area (visually estimated at more than 4 sq. ft.). Water is probably evident.

Major: Visual observation estimates that a large portion (more than 50% of the surface) of one or more walls have been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moisture area, mold and flaking are evident. The wall surface may have failed. One occurrence of this condition is sufficient to classify the wall system as severe.

OR

Visual observations estimate that more than 50% of the wall surface in any one area shows signs of water damage, stains, mold, or mildew.

Windows—Cracked/Broken/Missing Panes (Common Areas)

Glass or pane is cracked, broken or missing.

Severity Defined

Minor: Cracked window pane is observed.

Major: N/A.

Severe: Glass pane is broken or missing.

Windows—Damaged Window Sill (Common Areas)

The horizontal member of the window that bears the upright portion of the frame is damaged.

Severity Defined

Minor: Sill is damaged but still present. The inside of the surrounding wall is not exposed. No impact to window operation or weather tightness is visually apparent.

Major: Sill is missing or damaged enough to expose the inside of the surrounding walls and/or compromise its weather tightness.

Severe: N/A.

Windows—Security Bars Prevent Egress (Common Areas)

Security bars are damaged, constructed or installed such that egress is severely limited or impossible.

Note: This does not include windows not designed or intended for egress.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.

HVAC—Gas Fired Unit—Missing/Misaligned Chimney (Common Areas)

The exhaust system on a gas fired unit is misaligned.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any misalignment which causes improper or dangerous venting of gases.

HVAC—Inoperable (Common Areas)

The heating, cooling, or ventilation system is inoperable.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The HVAC does not function, providing neither necessary heating or cooling as designed. System does not respond when the controls are engaged.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

HVAC—Noisy/Vibrating/Leaking (Common Areas)

The HVAC distribution components, including fans, are the source of abnormal noise, unusual vibration, or leaks.

Severity Defined

Minor: N/A.

Major: The HVAC system exhibits or shows signs of abnormal vibration, other noise or leaks when engaged. The condition does not prevent the system from providing heating or cooling sufficient to maintain a minimum temperature range in the major living areas of the unit.

Severe: N/A.

HVAC—Radiator Covers Missing/Damaged (Common Areas)

Radiator cover is missing, damaged or inoperable.

Severity Defined

Minor: N/A.

Major: Radiator is damaged, impeding proper heating and cooling, but not creating any type of safety hazard.

Severe: Radiator is missing, damaged or substantially not installed to burn, fan or other potentially serious hazards.

HVAC—Rusted/Corroded (Common Areas)

The material condition of the equipment and/or associated piping/ducting shows evidence of flaking, discoloration or pitting.

Severity Defined

Minor: N/A.

Major: Significant formations of metal oxides are visible or a noticeable pit or crevice has developed.

Severe: Condition has rendered equipment and/or piping inoperable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Call-for-Aid Inoperable (Common Areas)

Call-for-Aid is inoperable.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: System does not function as intended.

Countertops—Missing/Damaged (Common Areas)

A flat work surface in a kitchen often integral to lower cabinet space is missing or deteriorated.

Severity Defined

Minor: Counter-top surface is discolored; materials have begun to separate or minor scratching and chipping is present.

Major: Surface shows advanced stage of deterioration and/or scratching, chipping.

Severe: Countertop working surface is missing or deteriorated and/or damaged and does not provide a sanitary surface to prepare food.

Cabinets—Missing/Damaged (Common Areas)

A case, box or piece of furniture with sets of drawers or shelves, with doors, primarily used for storage, mounted on walls or mounted on floors.

Severity Defined

Minor: Cabinet is discolored; materials have begun to separate or minor scratching and chipping is present. Cabinet assembly is present; up to two cabinets may be only marginally functional.

Major: Several (up to 50%) cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Severe: A significant number (more than 50%) of cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Dishwasher/Garbage Disposal—Inoperable (Kitchen) (Day Care) (Other Community Spaces)

A dishwasher or garbage disposal, if provided, does not work.

Severity Defined

Minor: N/A.

Major: The dishwasher or garbage disposal does not work.

Severe: N/A.

Exhaust Systems—Excessive Grease/
Inoperable (Kitchen)

Failure of apparatus to draw cooking exhaust.

Severity Defined

Minor: Accumulation of dirt threatens the free passage of air.

Major: N/A.

Severe: Exhaust fan is inoperable or flue may be completely blocked based on visual estimation.

GFI—Inoperable (Kitchen)(Restrooms/Pool Structures)

GFI is present and inoperable.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: GFI is present and is found inoperable.

Fencing—Damaged/Not Intact (Pools and Related Structures)

Fencing surrounding the swimming pool was observed to be damaged.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any damage that compromises the integrity of the fence.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Pool—Not Operational (Pools and Related Structures)

Pool was not in operation during the inspection.

Note: If not operational due to seasonal changes the observation should still be recorded that the pool was not in operation.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Pool was observed not to be operational.

Lavatory Sink—Damaged/Missing (Restrooms/Pool Structures)

Sink, faucet, or accessories are missing, damaged or inoperable.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink is still usable.

Major: N/A.

Severe: Absence or failure of the sink and/or associated hardware. Sink is unusable.

Plumbing—Clogged Drains (Kitchen) (Restrooms/Pool Structures)

Water does not drain adequately in shower, sink, tub or basin.

Severity Defined

Minor: Water does not drain freely when stopper is disengaged. Sink is usable.

Major: N/A.

Severe: Drain is completely clogged or has suffered extensive deterioration. Sink is not usable.

Plumbing—Leaking Faucet/Pipes (Kitchen) (Restrooms/Pool Structures)

Sink faucet or piping leaks.

Severity Defined

Minor: Leak or drip that is contained by basin. Faucet is usable.

Major: N/A.

Severe: Faucet leak and surrounding area is adversely affected.

OR

Piping leaks and surrounding area is adversely affected.

Range/Stove—Missing/Damaged/Inoperable (Kitchen)

Unit is absent or damaged.

Severity Defined

Minor: Unit's surface is dented, chipped or scratched. Operation of doors or drawers is impeded but stove is operational. Burner is misaligned and flame is not distributed equally. Pilot light is out on one or more burners.

Major: N/A.

Severe: The unit is missing, or any burners and/or oven is inoperable.

Refrigerator—Missing/Damaged/Inoperable (Kitchen)

The refrigerator does not perform adequately.

Severity Defined

Minor: Refrigerator has excessive accumulation of ice.

OR

Seals around doors are deteriorated.

OR

Operation of doors or drawers is impeded but refrigerator is operational.

Major: N/A.

Severe: Refrigerator is missing or does not cool at all.

Sink—Damaged/Missing (Kitchen)

Sink, faucet or accessories are missing, damaged, or inoperable.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink & hardware are still usable for food preparation.

Major: N/A.

Severe: Sink or hardware is missing or is totally unusable for food preparation.

Dryer Vent Missing/Damaged/Inoperable (Laundry Room)

Inadequate means is available to vent accumulated heat to outside.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Dryer vent is missing or is visually determined to be inoperable (blocked). Dryer exhaust is not effectively vented to the outside.

Baluster/Side Railings Damaged (Patio/Porch/Balcony)

Baluster or side railing on this exterior improvement is loose, damaged or inoperable, limiting the safe use of this area.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The baluster and/or side rails enclosing this area are loose, damaged or missing, impeding the safe use of this area.

Restroom Cabinet—Damaged/Missing (Restrooms/Pool Structures)

Damaged or missing cabinets, vanity tops, drawers, shelves, and doors to include medicine cabinets and vanities.

Severity Defined

Minor: One or more cabinets/vanities have missing and/or damaged shelves, vanity tops, drawers, and/or doors, but all cabinets are fully usable.

Major: N/A.

Severe: One or more cabinets are missing or are not usable for storage due to their poor condition.

Shower/Tub—Damaged/Missing (Restrooms/Pool Structures)

Shower/tub or components are damaged or non-existent.

Severity Defined

Minor: N/A.

Major: Presence of extensive discoloration and/or cracks in the basin. Shower/tub is usable.

Severe: Absence or failure of the shower, tub, faucets or drains and/or associated hardware. Shower or tub are unusable for any reason.

Ventilation/Exhaust System—Inoperable (Restrooms/Pool Structure)

Failure of apparatus to exhaust air.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Exhaust fan is inoperable or restroom window cannot be opened.

Water Closet/Toilet—Damaged/Clogged/Missing (Restrooms/Pool Structures)

Water closet/toilet is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: Fixture elements, such as but not limited to the seat, the flush handle, the cover, etc., are missing or damaged.

Severe: Fractured or broken bowl will not retain water. Fixture may not exist or a hazardous condition exists. Absence of all flushing ability due to obstruction or other defect.

Chutes Damaged/Missing Components (Trash Collection Areas)

Structure that is utilized to direct garbage into the appropriate storage container. Components include but are not limited to the chute, the chute door.

Note: Do not evaluate the door that leads to the trash room.

Severity Defined

Minor: N/A.

Major: Substantially reduced capacity to dispose of refuse.

Severe: Broken or inadequate collection structure causes garbage to backup into chutes. Compactors or components have failed.

Unit Inspectable Items

Items to inspect for "Unit" are as follows:

Bathroom
Call-for-Aid
Ceiling
Doors
Electrical System
Floors
Hot Water Heater
HVAC System
Kitchen
Lighting
Outlets/Switches
Patio/Porch/Balcony
Smoke Detector
Stairs
Walls
Windows

Call-for-Aid (Unit)

System to summon help. May be visual, audible, or both. May be activated manually or automatically when pre-programmed conditions are met.

This inspectable item can have the following deficiency:

Inoperable

Ceiling (Unit)

The visible overhead structure lining the inside of a room or area.

This inspectable item can have the following deficiencies:

Bulging/Buckling
Holes/Missing Tiles/Panels
Needs Paint
Water Stains/Water Damage/Mold/Mildew
Doors (Unit)

Means of access to the interior of a unit, room within the unit, or closet. Doors provide privacy and security, control passage, provide fire and weather resistance.

This inspectable item can have the following deficiencies:

Damaged Surface Holes/Paint/Rusting
Damaged Hardware/Locks
Deteriorated/Missing Seals (Entry Only)
Damaged Frames/Threshold/Lintels/Trim
Damaged/Missing Screen/Storm/Security Door

Missing Door

Electrical System (Unit)

Portion of the building system that safely provides electrical power throughout the building. Includes equipment that provides control, protection, metering, and service.

This inspectable item can have the following deficiency:

Blocked Access to Electric Panel
Evidence of Leaks Corrosion
GFI Inoperable
Missing Covers
Burnt Breakers
Frayed Wiring
Missing Breakers

Floors (Unit)

The visible horizontal surface system within a room or area underfoot; the horizontal division between two stories of a structure.

This inspectable item can have the following deficiencies:

Bulging/Buckling
Missing Flooring
Rot/Deteriorated Subfloor
Floor Covering Damage
Needs Paint
Water Stains/Water Damage/Mold/Mildew
Hot Water Heater (Unit)

This inspectable item can have the following deficiencies:

Gas Fired Unit—Missing/Misaligned Chimney
Inoperable Unit/Components
Pressure Relief Valve Missing
Leaking Valves/Tanks/Pipes
Rust/Corrosion
HVAC System (Unit)

System to provide heating, cooling and ventilation to the unit.

This does not include building heating or cooling system deficiencies such as boilers, chillers, circulating pumps, distribution lines, fuel supply, etc., OR occupant owned or supplied heating sources.

This inspectable item can have the following deficiencies:

Inoperable
Rust/Corrosion
Convection/Radiant Heat System/Covers
Missing/Damaged
Noisy/Vibrating/Leaking
Gas Fired Unit—Missing/Misaligned Chimney

Kitchen (Unit)

A place where food is cooked or prepared. The facilities and equipment used in preparing and serving food.

This inspectable item can have the following deficiencies:

Cabinets—Missing/Damaged
Plumbing—Clogged Drains
Plumbing—Leaking Faucets/Pipes
Range/Stove—Missing/Damaged/Inoperable
Refrigerator—Missing/Damaged/Inoperable
Dishwasher/Garbage Disposal—Inoperable
Range Hoods/Exhaust Fans—Excessive Grease/Inoperable
Countertops—Missing/Damaged
Sink—Missing/Damaged

Lighting (Unit)

System to provide illumination to a room or area. Includes fixtures, lamps, and supporting accessories.

This inspectable item can have the following deficiencies:

Missing/Inoperable Fixture
Outlets/Switches (Unit)

The receptacle connected to a power supply or method to control the flow of electricity. Includes two & three prong outlets, ground fault interrupters, pull cords, two & three pole switches, and dimmer switches.

This inspectable item can have the following deficiencies:

Missing

Missing/Broken Cover Plates

Patio/Porch/Balcony (Unit)

Adjoining patio, porch, or balcony.

This inspectable item can have the following deficiency:

Baluster/Side Railings Damaged

Smoke Detector (Unit)

Sensor to detect the presence of smoke and activate an alarm. May be battery operated or hard-wired to electrical system. May provide visual signal, audible signal, or both. Smoke detector must be located on every floor.

This inspectable item can have the following deficiencies:

Missing/Inoperable

Stairs (Unit)

Series of 4 or more steps or flights of steps joined by landings connecting levels of a unit. Includes supports, frame, treads, handrails.

This inspectable item can have the following deficiencies:

Broken/Missing Hand Railing
Broken/Damaged/Missing Steps
Walls (Unit)

The enclosure of the unit and rooms. Materials for construction include concrete, masonry block, brick, wood, glass block, plaster, sheet-rock. Surface finish materials include paint, wall-coverings.

This inspectable item can have the following deficiencies:

Bulging/Buckling
Damaged
Water Stains/Water Damage/Mold/Mildew
Damaged/Deteriorated Trim
Needs Paint

Windows (Unit)

Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, and vinyl.

This inspectable item can have the following deficiencies:

Cracked/Broken/Missing Panes
Deteriorated/Missing Caulking/Seals
Peeling/Needs Paint
Damaged Window Sill
Inoperable/Not Lockable
Security Bars Prevent Egress

Bathroom Cabinets—Damaged/Missing (Bathroom)

Damaged or missing cabinets, vanity tops, drawers, shelves, and doors. Includes medicine cabinets and vanities.

Severity Defined

Minor: Cabinet or vanity has missing and/or damaged shelves, vanity tops, drawers, and/or doors, but is fully usable.

Major: N/A.

Severe: Cabinet is missing or is not usable for storage due to its poor condition.

Lavatory Sink—Damaged/Missing (Bathroom)

Basin (sink) that shows signs of deterioration, distress, and/or is non-existent.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink is still usable.

Major: N/A.

Severe: Absence or failure of the sink and/or associated hardware. Sink is unusable.

Plumbing—Clogged Drains (Bathroom)

Water does not drain adequately in shower, tub, or basin (sink).

Severity Defined

Minor: Water does not drain freely when stopper is disengaged; however, sink or tub is usable.

Major: N/A.

Severe: Drain is completely clogged or has suffered extensive deterioration. Sink or tub is not usable.

Plumbing—Leaking Faucet/Pipes (Bathroom)

Basin, shower, water closet, or tub faucet and/or associated pipes leak water.

Severity Defined

Minor: Leak or drip that is contained by basin. Plumbing fixture is usable.

Major: N/A.

Severe: Leak is steady and surrounding area is adversely affected.

OR

Piping leaks and surrounding area is adversely affected.

Shower/Tub—Damaged/Missing (Bathroom)

Shower/tub or components are damaged or non-existent.

Note: This does not include Leaks.

Severity Defined

Minor: N/A.

Major: Presence of extensive discoloration and/or cracks in the basin. Shower/Tub is usable.

Severe: Absence or failure of the shower, tub, faucets or drains and/or associated hardware. Shower or tub is unusable for any reason.

Ventilation/Exhaust System—Inoperable (Bathroom)

Failure of apparatus to exhaust air.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Exhaust fan is inoperable or bathroom window cannot be opened.

Water Closet/Toilet—Damaged/Clogged/Missing (Bathroom)

Water closet/toilet is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: Fixture elements, such as but not limited to the seat, the flush handle, the cover etc., are missing or damaged.

OR

Toilet runs constantly.

Severe: Fractured or broken bowl will not retain water. Fixture may not exist or a hazardous condition exists. Absence of all flushing ability due to obstruction or other defect.

Inoperable (Call-for-Aid)

The system does not function.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: System does not function as intended.

Bulging/Buckling (Ceiling)

Ceiling has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging, bucking or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Holes/Missing Tiles/Panels (Ceiling)

Punctures in the ceiling surface. May or may not penetrate completely. Panels or tiles may be missing or damaged.

Severity Defined

Minor: Small holes or missing tile/panel found in a ceiling, visually estimated at no larger than a sheet of paper (8½ x 11 inches). Hole does not fully penetrate into the area above (cannot see through it).

Major: A hole or missing tile/panel is found which is visually estimated to be larger than a sheet of paper (8½ x 11 inches) but does not fully penetrate into the area above (cannot see through it).

OR

A crack greater than ⅛" wide and a minimum of 11" long.

Severe: Any hole is found which fully penetrates into the area above (can see through the hole to upper space).

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Needs Paint (Ceiling)

Paint is peeling, cracking, flaking, otherwise deteriorated, or surface is not painted.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Water Stains/Water Damage/Mold/Mildew (Ceiling)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single ceiling, visible indication of a leak, mold, or mildew, such as a darkened area, exists over a small area (less than 4 sq. ft.). Water may or may not be evident. Visual observations estimate that less than 10% of the ceiling surface area is affected.

Major: For a single ceiling, visible indication of a leak mold or mildew, such as

a darkened area, exists over a large area (more than 4 sq. ft.). Water may or may not be evident.

OR

Visual observations estimate that 10% to 50% of the ceiling area has minor damage.

Severe: Visual observations estimate that a large portion (50% of its surface area) of one ceiling has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moist areas, mold, or mildew are evident. The ceiling surface may have failed.

OR

Cases where visual observations estimate that more than 50% of the ceiling area shows minor defined signs of damage, stains, mold, or mildew.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Air Quality.")

Damaged Surface—Holes/Paint/Rusting (Doors)

Damage in the door surface that may affect either the surface protection or the strength of the door, or it may compromise building security or privacy. Includes holes, peeling/cracking/no paint, or significant rust.

Note: A bathroom, bedroom, or entry door impacted is severe.

Severity Defined

Minor: Any one door has either: small holes (less than ¼ inch in diameter); cracking/peeling paint; and/or the door or its components are rusting.

Major: If more than one building exterior door has minor surface damage as defined above.

OR

Any single unit door except bathroom/bedroom and/or entry doors, has a hole or holes ranging in size from ¼ inch up to 1 inch diameter.

Severe: If any unit door has a hole or holes larger than 1 inch in diameter, or significant peeling/cracking/no paint or rust that affects the integrity of the door surface.

OR

If bathroom, bedroom and/or entry door has either minor or major damage as defined above.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged Frames/Threshold/Lintels/Trim (Doors)

The frame, header, jamb, threshold, lintels, or trim, is visibly warped, split, cracked, or broken in some manner.

Severity Defined

Minor: A single door's frame/threshold/lintel and/or trim is damaged but does not hinder door operation. The damaged door frame does not prevent door from being locked.

Major: More than one door has the minor damage defined above.

Severe: At least one door is rendered inoperable and/or unlockable due to damage to the door's frame/threshold/lintel and/or trim.

Damaged Hardware/Locks (Doors)

The attachments to a door to provide hinging, hanging, opening, closing, or security are damaged or missing. Includes locks, panic hardware, overhead door tracks, springs and pulleys, sliding door tracks and hangers, and door closures.

Severity Defined

Minor: A single door's hardware, as defined above, is damaged but does not hinder current door operation. The door functions, is lockable, and the door's panic hardware is operable.

Major: More than one building exterior door has minor damaged hardware as defined above.

Severe: A single door is rendered inoperable and/or unlockable due to damage to the door's hardware.

OR

A single building exterior door's panic hardware is not operable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged/Missing Screen/Storm/Security Door (Doors)

Visible damage to surfaces including screens, glass, frames, hardware, and door surface.

Severity Defined

Minor: One or more screen/storm doors has damage or is missing screens/glass.

Major: One or more security doors has damage, but is still operational and the security door still serves its design purpose.

Severe: A single security door is inoperable or missing. (Missing only applies to those situations where a security door is supposed to be present but is observed not to be there.)

Deteriorated/Missing Seals (Entry Only) (Doors)

The seals and stripping around the entry door(s) designed to provide weather and fire resistance are damaged or missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: For a single entry door the seals are missing.

Deteriorated/Missing Caulking/Seals (Windows)

The caulking or seal is missing, poorly installed, or deteriorated.

Note: This also includes Thermopane or insulated windows that have failed.

Severity Defined

Minor: Missing or deteriorated caulk or seals are observed. No evidence of damage to window or surrounding structure exists.

Major: Missing or deteriorated caulk or seals are observed, with some evidence of leaks or damage to the window or surrounding structure visible.

OR

A Thermopane or insulated window has failed. (Typically indicated by being fogged up.)

Severe: Missing or deteriorated caulk or seals are observed and the window is not

weather-tight. Evidence of leaks or damage to the window or surrounding structure is readily apparent.

Missing Door (Door)

Door is absent.

Note: A bathroom, bedroom, or entry door impacted is severe.

Severity Defined

Minor: The missing door is not a bathroom, bedroom or entry door.

Major: Missing doors are not an entry, bedroom, or bathroom. They present no hazard and visual observation shows two doors or up to 50% of the doors are missing.

Severe: The missing door is a bathroom, bedroom or entry door.

OR

Visual observation estimates more than 50% of the unit doors are missing from areas other than the bathroom, bedroom, or entry door.

Blocked Access to Electric Panel (Electrical System)

The placing of any object that will delay or prevent the access to any panelboard or main power switch in an emergency and cause a fire hazard.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: One or more items are placed in front of the unit's electrical panel, impeding accessibility in time of an emergency.

Burnt Breakers (Electrical System)

Breakers having carbon on the plastic body, or plastic body is melted or scarred.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any signs of carbon residue or breaker is melted and/or has arcing scars.

Evidence of Leaks/Corrosion (Electrical System)

Liquid stains, rust marks, or other signs of corrosion are found on electrical enclosures or hardware.

Note: Do not address surface rust if it does not affect the condition of the electrical enclosure.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any corrosion that affects the condition of the current carrying components. Stains and/or rust on the interior of electrical enclosures or evidence of water leaks are present in the enclosure or hardware.

Frayed Wiring (Electrical System)

Insulation may be frayed, stripped, or removed resulting in a potentially dangerous condition.

Note: This does not include any wires not intended to be insulated, such as grounding wires.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Nicks, abrasions or fraying of the insulation.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

GFI—Inoperable (Electrical System)

GFI is present and inoperable.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: GFI is present and inoperable.

Comments

Severe: This creates a health and safety concern.

Missing Breakers (Electrical System)

An open circuit breaker position in a panel-board, main panel board or other electrical box containing circuit breakers; not appropriately blanked-off.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Open breaker port.

Missing Covers (Electrical System)

Missing covers on any electrical device box, panel box, switch gear box, control panel, etc., where visible electrical connections are exposed.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Cover is missing resulting in exposed visible electrical connections.

Bulging/Buckling (Floors)

Floor has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging, buckling, or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Floor Covering Damage (Floors)

Damage to the carpet tiles, wood, sheet vinyl or other floor covering.

Severity Defined

Minor: Floor covering may have stains, surface burns, shallow cuts, small holes or tears in non-traffic areas, loose areas, exposed seams. The covering is fully functional. Visual observation estimates that less than 10% of the floor area is affected. Does not present a safety hazard.

Major: Floor covering may have burn marks, cuts, tears, holes, or large sections of exposed seams exposing the underlying material. The covering does not present a safety hazard. Visual observations estimate that 10% to 50% of the floors are affected.

Severe: Large sections of the floor covering are damaged estimated at more than 50% of the floor area.

OR

Floor covering damage that exposes the underlying material.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Missing Flooring Tiles (Floors)

Flooring such as VLT, sheet, vinyl, carpet or other flooring material is missing.

Severity Defined

Minor: For a single floor small holes in areas of the floor surface are missing. Visual observations estimate less than 10% of the floors surveyed are affected. No safety problems exist due to this condition.

Major: Visual observations estimate 10% to 50% of the floors have missing flooring. No safety problem exists due to this condition.

Severe: Visual observations estimate more than 50% of the floors are affected missing flooring; or the missing flooring is sufficient for safety to be compromised. One concern involving compromised safety is sufficient to classify the floor system as severe.

Needs Paint (Floors)

For floors that are painted, paint is peeling, cracking, flaking, or otherwise deteriorated.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Rot/Deteriorated Subfloor (Floors)

Subfloor has decayed or is decaying.

Severity Defined

Minor: N/A.

Major: Condition is slightly noticeable.

Small areas of rot or spongy flooring are found.

Severe: Large areas of rot are readily visible, application of weight causes noticeable deflection.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Water Stains/Water Damage/Mold/Mildew (Floors)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: N/A.

Major: Visible indication of a water stain, mold, or mildew, such as darkened area, exists over a small area (4 sq. ft. or less). Water may or may not be evident.

Severe: Visual observations estimate that a large portion of floor has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, mold, moist areas and flaking are evident. The floor surface may have failed.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually.

(Includes but is not limited to "Air Quality", "Hazards.")

Gas Fired Unit—Missing/Misaligned Chimney (Hot Water Heater)

The exhaust system on a gas fired unit is misaligned.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any misalignment which causes improper or dangerous venting of gases.

Inoperable Unit/Components (Hot Water Heater)

Hot water supply is unavailable due to system or system component malfunction.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: After running for several minutes, water from the hot water taps is not warmer than room temperature.

Leaking Valves/Tanks/Pipes (Hot Water Heater)

Water visibly leaking from any hot water system component. Includes valve flanges, stems, bodies, or from any domestic hot water tank or its piping.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Water is visibly leaking.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Electrical Hazards.")

Pressure Relief Valve Missing (Hot Water Heater)

Valve that regulates the temperature and pressure of the water heater is missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: No pressure relief valve is present.

Rust/Corrosion (Hot Water Heater)

The material condition of the equipment and/or associated piping shows evidence of flaking, discoloration, reduction in wall thickness, pitting, or crevices.

Severity Defined

Minor: Patches of noticeable formations of metal oxides.

Major: Significant formations of metal oxides are visible and a noticeable pit or crevice has developed.

Severe: Equipment and/or piping integrity has been compromised, (e.g., leaks are visible).

Gas Fired Unit—Missing/Misaligned Chimney (HVAC)

The exhaust system on a gas fired unit is misaligned.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any misalignment which causes improper or dangerous venting of gases.

Inoperable (HVAC)

The heating or cooling system is inoperable in the unit.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The HVAC in the unit does not function, providing neither necessary heating or cooling as designed. System does not respond when the unit controls are engaged.

Noisy/Vibrating/Leaking (HVAC)

The HVAC distribution components in the unit, including fans, are the source of abnormal noise, unusual vibration, or leaks.

Severity Defined

Minor: N/A.

Major: The HVAC system in the unit exhibits or shows signs of abnormal vibration, other noise or leaks when engaged. The condition does not prevent the system from providing heating or cooling sufficient to maintain a minimum temperature range in the major living areas of the unit.

Severe: N/A.

Convection/Radiant Heat System Covers Missing/Damaged (HVAC)

Convection/Radiant heat system cover is missing or damaged.

Severity Defined

Minor: N/A.

Major: One or more covers are damaged, impeding proper heating, but not creating any type of safety hazard.

Severe: One or more covers are missing, or substantially not installed, enabling exposure to burn, fan or other potentially serious hazards. A single occurrence constitutes a safety hazard.

Rust/Corrosion (HVAC)

A component(s) of the system show visible deterioration due to oxidation or corrosion of system parts.

Severity Defined

Minor: N/A.

Major: Deterioration from rust and corrosion is observed on the HVAC units in the unit. The condition does not prevent the system from providing sufficient heating or cooling.

Severe: N/A.

Cabinets—Missing/Damaged (Kitchen)

A case, box or piece of furniture with sets of drawers or shelves, with doors, primarily used for storage, mounted on walls or mounted on floors.

Severity Defined

Minor: Cabinet is discolored; materials have begun to separate or minor scratching and chipping is present. Cabinet assembly is present; up to two cabinets may be only marginally functional.

Major: Several (up to 50%) cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Severe: A significant number (more than 50%) of cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Countertops—Missing/Damaged (Kitchen)

A flat work surface in a kitchen often integral to lower cabinet space is missing or deteriorated.

Severity Defined

Minor: Counter-top surface is discolored; materials have begun to separate or minor scratching and chipping is present.

Major: Surface shows advanced stage of deterioration and/or scratching, chipping.

Severe: Countertop working surface is missing or deteriorated and/or damaged and does not provide a sanitary surface to prepare food.

Dishwasher/Garbage Disposal—Inoperable (Kitchen)

A dishwasher or garbage disposal, if provided, does not work.

Severity Defined

Minor: N/A.

Major: The dishwasher or garbage disposal does not work.

Severe: N/A.

Range Hood/Exhaust Fans—Excessive Grease/Inoperable (Kitchen)

Failure of apparatus to draw out cooking exhaust due to excess dirt, excessive grease, and/or other operational problems.

Severity Defined

Minor: Accumulation of dirt or grease threatens the free passage of air.

Major: N/A.

Severe: Range hood/exhaust fan is inoperable or presents serious electrical hazard to health or property. Flue may be completely blocked based on visual estimation.

Plumbing—Clogged Drains (Kitchen)

Water does not drain adequately.

Severity Defined

Minor: Basin does not drain freely when stopper is disengaged.

Major: N/A.

Severe: Drain is completely clogged or has suffered extensive deterioration.

Inoperable/Not Lockable (Windows)

Window cannot be opened or closed due to frame damage, faulty hardware, or other reason.

Severity Defined

Minor: Window is inoperable, but can be secured. Other operable windows are present in the immediate area.

Major: N/A.

Severe: Window is inoperable and cannot be secured. No operable windows are present in the immediate area.

Cracked/Broken/Missing Panes (Windows)

Glass or pane is cracked, broken or missing.

Severity Defined

Minor: Cracked window pane is observed.

Major: N/A.

Severe: Glass pane is broken or missing.

Damaged Window Sill (Windows)

The horizontal member of the window that bears the upright portion of the frame is damaged.

Severity Defined

Minor: Sill is damaged, but still present. The inside of the surrounding wall is not exposed. No impact to window operation or weather tightness is visually apparent.

Major: Sill is missing, or damaged enough to expose the inside of the surrounding walls and/or compromise its weather tightness.

Severe: N/A.

Plumbing—Leaking Faucets/Pipes (Kitchen)

Basin faucet or drain connections leak.

Severity Defined

Minor: Leak or drip that is contained by basin/pipes. Faucet is usable.

Major: N/A.

Severe: Leak is steady. Surrounding area is adversely affected. Water supply must be turned off. The faucet/pipe is not usable.

Range/Stove—Missing/Damaged/Inoperable (Kitchen)

Unit is missing or damaged.

Severity Defined

Minor: Unit's surface is dented, chipped or scratched. Operation of doors or drawers is impeded but stove is operational. Burner is misaligned and flame is not distributed equally. Pilot light is out on one or more burners.

Major: N/A.

Severe: Unit is missing, or any burners and/or oven is inoperable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Refrigerator—Missing/Damaged/Inoperable (Kitchen)

The refrigerator is not present or does not cool adequately.

Severity Defined

Minor: Refrigerator has excessive accumulation of ice.

OR

Seals around doors are deteriorated.

OR

Operation of doors or drawers is impeded but refrigerator is operational.

Major: N/A.

Severe: Refrigerator is missing or does not cool or work at all.

Sink—Missing/Damaged (Kitchen)

Sink, faucet or accessories are missing, damaged, or inoperable.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink & hardware are still usable for food preparation.

Major: N/A.

Severe: Sink or hardware is missing or is totally unusable.

Missing/Inoperable Fixture (Lighting)

Lighting fixture is missing, or does not operate normally. Malfunction may be with the total system or with individual components.

Severity Defined

Minor: Permanent lighting fixture is missing or inoperable, in one room in a unit, and switched outlet exists in the room.

Major: Permanent lighting fixture is missing or inoperable in two or more rooms, and no switched outlet exists in the room.

Severe: Two or more rooms have missing or inoperable permanent light fixtures, and do not have switched outlets within the rooms.

Missing (Outlets/Switches)

Outlet, switch or both are missing.

Note: This does not apply to empty junction boxes that were not intended to contain an outlet or switch.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: An outlet or switch is missing.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Electrical Hazards.")

Missing/Broken Cover Plates (Outlets/Switches)

The flush plate used to cover the opening surrounding a switch or outlet is damaged or does not exist.

Severity Defined

Minor: Outlets/switches has broken cover plate. The condition does not result in exposed wiring.

Major: N/A.

Severe: A broken or missing cover plate results in exposed wiring.

Baluster/Side Railings Damaged (Patio/Porch/Balcony)

Baluster or side railing on the porch/patio/balcony is loose, damaged, or inoperable, limiting the safe use of this area.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The baluster and/or side rails enclosing this area are loose, damaged or missing, impeding the safe use of this area.

Missing/Inoperable (Smoke Detector)

Smoke detector will not activate, or is missing.

Note: At least one smoke detector is required on each level.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: A single missing or inoperable smoke detector.

Broken/Missing Hand Railing (Stairs)

The hand rail is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The hand-rail for four or more stairs is completely missing or damaged, loose or otherwise unusable.

Broken/Damaged/Missing Steps (Stairs)

The horizontal tread or stair surface is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Step is broken, damaged or missing.

Bulging/Buckling (Walls)

Wall has bowed, deflected, sagged or has deviated from original vertical alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging/Buckling or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer, if doubt about severity exists.

Walls—Damaged/Deteriorated Trim (Common Area)

Cove molding, chair rail, base molding or other decorative trim is damaged or has decayed.

Severity Defined

Minor: Small areas of deterioration in the trim surfaces.

Major: Large areas of deterioration in the trim surfaces.

Severe: Significant areas of deterioration in the trim surfaces.

Damaged (Walls)

Punctures in the wall surface. May or may not penetrate completely. Panels or tiles may be missing or damaged. Does not include small holes created by hanging pictures, etc.

Severity Defined

Minor: A hole, missing tile/panel, or other damage found in a wall, visually estimated at no larger than 8½ x 11 inches. Hole does not fully penetrate into the adjoining room (cannot see through it).

Major: A hole, missing tile/panel or other damage is found in a wall that is larger than a sheet of paper (8½ x 11).

OR

A crack greater than 1/8" in width and a minimum of 11" long.

Severe: A hole of any size is found which fully penetrates into an adjoining room, (can see through the hole).

OR

Two or more walls have major holes.

Needs Paint (Walls)

Paint is peeling, cracking, flaking, otherwise deteriorated.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Water Stains/Water Damage/Mold/Mildew (Walls)

Walls are not watertight. Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single wall, visible indication of a leak, mold, or mildew, such as darkened

area, exists over a small area. (less than 4 sq. ft. by visual estimate). Water may or may not be evident.

Major: For a single wall, visible indication of a leak exists over a large area (visually estimated at more than 4 sq. ft.). Water is probably evident.

Severe: Visual observation estimates that a large portion (more than 50% of the surface) of one or more walls have been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moisture area, mold and flaking are evident. The wall surface may have failed. One occurrence of this condition is sufficient to classify the wall systems as severe.

OR

Visual observations estimate that more than 50% of the wall surface in any one unit show signs of water damage, stains, mold, or mildew.

Deteriorated/Missing Caulking/Seals (Windows)

The caulking or seal is missing, poorly installed, or deteriorated.

Note: This also includes Thermopane or insulated windows that have failed.**Severity Defined**

Minor: Missing or deteriorated caulk or seals are observed. No evidence of damage to window or surrounding structure exists.

Major: Missing or deteriorated caulk or seals are observed, with some evidence of leaks or damage to the window or surrounding structure visible.

OR

A Thermopane or insulated window has failed. (Typically indicated by being fogged up.)

Severe: Missing or deteriorated caulk or seals are observed and the window is not weather-tight. Evidence of leaks or damage to the window or surrounding structure is readily apparent.

Peeling/Needs Paint (Windows)

Paint covering the window assembly/trim is cracking, flaking, or otherwise failing.

Severity Defined

Minor: Peeling paint and/or a window in need of paint is observed.

Major: N/A.

Severe: N/A.

Security Bars Prevent Egress (Windows)

Security bars are damaged, constructed or installed, such that ingress/egress is severely limited or impossible.

Note: This does not include windows not designed or intended for ingress/egress.**Severity Defined**

Minor: N/A.

Major: N/A.

Severe: The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.

Health and Safety Inspectable Items

Items to inspect for "Health and Safety" are as follows:

Air Quality

Elevator

Flammable Materials

Hazards

Electrical Hazards

Emergency/Fire Exits

Garbage and Debris

Infestation

Air Quality (Health and Safety)

Indoor spaces must be free from high levels of sewer gas, fuel gas, mold, mildew, or other harmful pollutants. Indoors must have adequate ventilation.

The following deficiencies can be noted:

Mold and/or Mildew Observed

Propane/Natural Gas/Methane Gas Detected

Sewer Odor Detected

Electrical Hazards (Health and Safety)

Any hazard that poses a risk of electrical fires, electrocution, or spark/explosion.

The following deficiencies can be noted:

Exposed Wires/Open Panels

Water Leaks On or Near Electrical Equipment

Emergency/Fire Exits (Health and Safety)

All buildings must have acceptable fire exits that are also properly marked and operational. (This would include fire towers, stairway access doors, & external exits.)

These can include operable windows on the lower floors with easy access to the ground or a back door opening onto a porch with a stairway leading to the ground.

Note: This does not apply to individual units.

The following deficiencies can be noted:

Emergency/Fire Exits Blocked/Unusable

Missing Exit Signs

Flammable Materials (Health and Safety)

Any substance that is either known to be combustible or flammable or is stored in a container identifying it as such.

The following deficiency can be noted:

Improperly Stored

Garbage and Debris (Health and Safety)

Accumulation of garbage and debris exceeding the capacity of the storage area or not stored in an area sanctioned for such use.

The following deficiencies can be noted:

Outdoors

Indoors

Hazards (Health and Safety)

Physical hazards that pose risk of bodily injury.

The following deficiencies can be noted:

Sharp Edges

Tripping

Other

Infestation (Health and Safety)

Presence of rats, or severe infestation by mice or insects such as roaches or termites.

The following deficiencies can be noted:

Insects

Rats/Mice/Vermin

Mold and/or Mildew Observed (Air Quality)

Evidence of mold and/or mildew; especially in such areas as bathrooms and air outlets.

Propane/Natural Gas/Methane Gas Detected (Air Quality)

Strong propane, natural gas, and/or methane gas odors detected that could pose risk of explosion/fire or health risk if inhaled.

Sewer Odor Detected (Air Quality)

Sewer odors detected that could pose risk if inhaled for prolonged periods.

Exposed Wires/Open Panels (Electrical Hazards)

Exposed bare wires or openings in electrical panels.

Water Leaks On or Near Electrical Equipment (Electrical Hazards)

Water is observed leaking, puddling, or ponding on or immediately near any electrical apparatus. Poses risk of fire, electrocution, or explosion.

Tripping (Elevator)

Elevator is misaligned (doesn't level properly) by more than 3/4" with the floor. Presents tripping hazard during ingress/egress.

Emergency/Fire Exits Blocked/Unusable (Emergency/Fire Exits)

The exit is not useable or ingress/egress is limited due to conditions such as debris, storage, door or window nailed shut, broken lock or chained panic hardware.

Missing Exit Signs (Emergency/Fire Exit)

Exit signs must be present and clearly identify all emergency exits. Illumination in area of sign must be provided.

Improperly Stored (Flammable Materials)

Improperly stored flammable materials. Potential risk of fire/explosion is identified by the location or manner in which the substance is stored.

Indoors (Garbage and Debris)

An accumulation of garbage that visibly exceeds planned storage capacity or is located in an area not sanctioned for staging or storing garbage or debris.

Note: Please review for fire hazard effects.

This does not include garbage and debris improperly stored outside. See *Garbage and Debris—Outdoors* for this deficiency.

Outdoors (Garbage and Debris)

An accumulation of garbage that visibly exceeds planned storage capacity or is located in an area not sanctioned for staging or storing garbage or debris.

Note: this does not include garbage improperly stored indoors. See *Garbage and Debris—Indoors* for this deficiency.

Sharp Edges (Hazards)

Any physical defect that poses the risk of cutting or breaking human skin or other bodily harm, generally in commonly used or traveled areas.

Tripping (Hazards)

Any physical defect that poses a tripping risk, generally in walkways or other traveled areas.

Note: This does not include tripping hazards from elevators that do not level properly. See *Elevator—Tripping* under Health & Safety for these occurrences.

Other (Hazards)

Other general defects or hazards that pose risk of bodily injury. (Must be specified by the inspector.)

Note: This would include items not specifically defined elsewhere but pose a risk.

Insects (Infestation)

Infestation of insects including, but not limited to, roaches or ants are observed throughout the unit or room especially in food preparation and storage areas.

Note: This does not include infestation from rats/mice. See *Infestation—Rats/Mice/Vermin* under Health & Safety for these occurrences.

Rats/Mice/Vermin (Infestation)

The presence of rats or mice is indicated by sightings, rat or mouse holes, or droppings.

Note: This does not include infestation from insects. See *Infestation—Insects* under Health & Safety for these occurrences.

Appendix 3—Physical Inspection Summary Report

The Inspection Summary Report is designed to achieve two objectives:

1. Provide the Public Housing Agency or owner and/or owner agent (POA) with the background information i.e. addresses, phone numbers, building names, etc., collected during inspection of a given property so that any relevant discrepancies can be identified and resolved.

2. Inform the POA of the physical condition of their property captured during a REAC inspection.

The items described below introduce the information provided in the Inspection Summary Report and are intended to meet the objectives illustrated above.

Inspection Number: The inspection number is unique for each inspection conducted by REAC. Each time a property is inspected by REAC, a new inspection number is utilized. These unique numbers may be used to communicate with REAC on any matter concerning a particular inspection.

Property Information: Information related to a property is provided:

Property identification number (in parentheses)—a unique number in HUD databases

Property name

Status as a scattered site (Yes/No)

Relevant addresses, phone numbers, fax numbers, and e-mail addresses for property

Each of these should be checked carefully for accuracy. Any discrepancies should be reported to your contact in the HUD office having jurisdiction over your property.

Building Unit Count: The total number of buildings and units on the property are given, along with the number of buildings and units actually inspected by REAC

Scores: An overall numerical score is given as a value from zero to 100. Separate numerical scores are also given for each of five areas:

Site

Building exterior

Building systems

Common areas**Units**

The five area scores range from zero to the maximum number of points possible for each area. The possible points for a given area are determined for a specific property based on the inspectable items actually present in each area. The sum of the area points identifies what the overall score would be if there were no health & safety (H&S) deficiencies. The overall numerical score is then calculated by subtracting the sum of deductions for H&S deficiencies from the sum of the individual "area points." Examples of overall scores are: 95c; 67b*; 84a*; 100b; 78a; and 43c*. The asterisk indicates that H&S deficiencies were found with respect to smoke detectors. The lower-case letter indicates whether or not other kinds of H&S deficiencies were observed, as follows:

The letter "a" is given if no health and safety deficiencies were observed other than for smoke detectors.

The lower-case letter "b" is given if one or more non-life threatening H&S deficiencies, but no exigent/fire safety H&S deficiencies were observed other than for smoke detectors.

The lower-case letter "c" is given if there were one or more exigent/fire safety (calling for immediate attention or remedy) H&S deficiencies observed.

Although all H&S deficiencies other than smoke detector problems affect the scores with appropriate deductions, the letters grades are added to highlight the serious nature of H&S deficiencies, all of which need to be addressed by the POA.

Health and Safety Counts: In addition to the counts of actual H&S deficiencies observed in the inspected buildings and units, the estimated number of H&S deficiencies that would have been found had all buildings and units been inspected is also given. This projected count gives a sense of the total H&S problem for the inspected property. The projection is calculated by dividing the counts actually observed in buildings or units by the proportion of buildings or units inspected. These projected counts for buildings and units are added to the actual counts for site to determine the total projection. The percent of buildings and units inspected is additionally given to show the basis for the calculations.

Participants/Buildings/Units: Information provided includes:

Relevant addresses, phone numbers, fax numbers, and e-mail addresses for participants;

Name, year built, number of units and address for each building on the property. **Note:** All buildings on the property should be listed.

As before, each of these should be checked carefully for accuracy and any discrepancies should be reported to your contact in the HUD office having jurisdiction over your property.

Inspectable Items: This portion of the report details all deficiencies found in the inspection. The main headings in the first column refer to the inspectable area—site, building exterior, building systems, common areas, unit, or health & safety, where the deficiency was observed. The entries are

“inspectable items” within which the deficiencies were found. Some items may not be present for a given property. In such cases, appropriate adjustments are made in the area weights used to obtain the overall score. Items present, but with no deficiencies found, are not listed. The potential inspectable items are:

Site: fencing & retaining walls, grounds, lighting, mail boxes/project signs, market appeal, parking lots/driveways, play areas & equipment, refuse disposal, roads, storm drainage, and walkways

Building Exterior: doors, fire escapes, foundations, lighting, roofs, walls, and windows

Building Systems: domestic water, electrical system, elevators, emergency power, fire protection, heating/ventilation/air conditioning, and sanitary system

Common Areas: basement/garage/carport, closet/utility/mechanical, community room, day care, halls/corridors/stairs, kitchen, laundry room, lobby, office, other community spaces, patio/porch/balcony, pools & related structures, restrooms, storage, and trash collection areas

Unit: bathroom, call-for-aid, ceiling, doors, electrical system, floors, heating/ventilation/

air conditioning, hot water heater, kitchen, lighting, outlets/switches, patio/porch/balcony, stairs, walls, and windows

Health & Safety: emergency/fire exits, electrical hazards, flammable materials, garbage and debris, infestation, handrails, air quality, hazards, and elevator

NO/OD: The inspection protocol requires the inspector to check for the existence of certificates for certain items such as lead-based paint, elevators, etc. If all of the required certificates are verified by the inspector, the report will not include any certificate information. If any appropriate certificates are not present, the first inspectable item listed will be “certificates” and the designation “NO” will be listed for each unavailable certificate.

OD in this column refers to “observed deficiency” for the given item.

Observation: The column lists the specific deficiencies observed within a given inspectable item. Each deficiency has a definition, which specifies what must be observed for that deficiency to be recorded. Also noted in this column are observations about Health & Safety items. These are:

(LT)—Exigent/Fire Safety (calling for immediate attention or remedy)

(NLT)—Not Life Threatening

(SD)—Smoke Detector

Definitions for all deficiencies are given in the physical inspection section at REAC's web site on the Internet (www.hud.gov/reac/reaphyin.html).

Severity: Deficiencies differ by “severity.” The definitions specify what must be recorded for a given deficiency under one of three possible severity levels—minor, major and severe. The severity level is given on the report to indicate which part of the definition actually applies for the specific deficiency observed. Severity levels are defined within a given deficiency and do not necessarily indicate which deficiencies are the worst. For more serious deficiencies, a major severity level may be more of a problem and may reduce the overall score more than less serious deficiencies with a severity level of “severe.”

Location/Comments: Comments are required for all “severe” deficiencies.

BILLING CODE 4210-32-P

Inspection Summary Report -

Inspection No:

Property:

Inspection Date:

Phone:

Fax:

E-Mail Address:

Scattered Site?: Yes

ACC#:

CA#:

Building Unit Count

	#Total	#Inspected
Buildings	76	25
Units	148	23

Scores

	Possible Points	Area Points	H & S Deduction
Site	20.0	16.5	0.0
Bldg Ext	20.0	19.7	0.0
Bldg Sys	15.0	15.0	
CA	0.4	0.4	
Units	44.7	32.4	0.9
Overall	100.0	84.0	0.9
Final Score = Area Points - H & S Deduction			83 c*

Health and Safety Counts

Non-Life Threatening

	Site	Bldg	Unit	Total
Actual	0	0	2	2
%Inspected	---	33%	16%	---
Projected	0	0	13	13

Life Threatening

Actual	0	0	1	1
%Inspected	---	33%	16%	---
Projected	0	0	6	6

Smoke Detectors

Actual	0	0	5	5
%Inspected	---	33%	16%	---
Projected	0	0	32	32

Participants:

Management Agent

Phone:

Fax:

E-Mail Address:

Buildings/Units:

No	Name/Type/Reason Uninspectable	Year built	# Units	Address
1	B-1-OFFICE Common Building	1959	0	
2	B-2 Duplex Not In Sample	1959	2	
3	B-3 Duplex Not In Sample	1959	2	
4	B-4 Duplex Not In Sample	1959	2	
5	B-5 Duplex Not In Sample	1959	2	
6	B-6 Duplex Not In Sample	1959	2	
7	B-7 Duplex Not In Sample	1959	2	
8	B-8 Duplex	1959	2	
427	3 Bedroom	Occupied		

Inspection Summary Report -

66	B-66 Duplex	1959	2	Three pages deleted for illustrative purposes.
	318	2 Bedroom	Occupied	
67	B-67 Duplex	1959	2	
	312	3 Bedroom	Occupied	
68	B-68 Duplex <i>Not In Sample</i>	1959	2	
69	B-69 Duplex <i>Not In Sample</i>	1959	2	
70	B-70 Duplex <i>Not In Sample</i>	1959	2	
71	B-71 Duplex <i>Not In Sample</i>	1959	2	
72	B-72 Duplex	1959	2	
	305	2 Bedroom	Not Occupied	
73	B-73 Duplex <i>Not In Sample</i>	1959	2	
74	B-74 Duplex	1959	2	
	210	2 Bedroom	Occupied	
75	B-75 Duplex <i>Not In Sample</i>	1959	2	
76	B-76 Duplex <i>Not In Sample</i>	1959	2	

Inspectable Items:

<u>Inspected Item</u>	<u>NO/OD</u>	<u>Observation</u>	<u>Severity</u>	<u>Location/Comments</u>
Site				
Grounds	OD	Ponding/Site Drainage	Major	
Building 10 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 16 -				
Bathroom	OD	GFI - Inoperable	Severe	Location: BATH; Comments: GFI DID NOT TRIP
		Plumbing - Leaking Faucet/Pipe	Minor	
Building 18 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 28 - Unit				
Kitchen	OD	GFI - Inoperable	Severe	Location: KITCHEN; Comments: GFI DID NOT TRIP
Building 29 - Unit				
Ceiling	OD	Peeling/Needs Paint	Major	

Inspection Summary Report -

Building 35 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 35 - Unit				
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL; Comments: DETECTOR DID NOT ACTIVATE
Building 39 - Building Exterior				
Walls	OD	Missing or Broken Pieces/Holes	Major	
Building 39 - Unit				
Walls	OD	Holes/Missing Tiles/Panels	Major	
Building 39 - Unit - Health & Safety				
Infestation	OD	Insects (NLT)	Severe	Location: KITCHEN; Comments: ROACHES
Building 52 - Unit				
Kitchen	OD	GFI - Inoperable	Severe	Location: KITCHEN; Comments: GFI OUTLET NOT GROUNDED
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL; Comments: DETECTOR DID NOT ACTIVATE
Building 57 - Unit				
Bathroom	OD	GFI - Inoperable	Severe	Location: BATH; Comments: GFI OUTLET NOT GROUNDED
Kitchen	OD	GFI - Inoperable	Severe	Location: KITCHEN; Comments: GFI NOT GROUNDED
Building 59 - Unit				
Bathroom	OD	GFI - Inoperable	Severe	Location: KITCHEN; Comments: GFI DID NOT TRIP
Building 60 - Unit				
Bathroom	OD	Water Closet - Damaged/Clogged	Major	
Kitchen	OD	GFI - Inoperable	Severe	Location: KITCHEN & BATH; Comments: GFI OUTLET NOT GROUNDED
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL; Comments: DETECTOR DID NOT ACTIVATE
Building 60 - Unit - Health & Safety				
Infestation	OD	Insects (NLT)	Severe	Location: KITCHEN; Comments: ROACHES
Building 63 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 67 - Unit				
Hot Water Heater	OD	Gas Fired Unit-Miss'g/Misalign (LT)	Severe	Location: HALL; Comments: FLUE PIPE NOT CONNECTED TO HWH
Building 72 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 72 - Unit				
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL; Comments: DETECTOR DID NOT ACTIVATE
Building 74 - Unit				
Bathroom	OD	GFI - Inoperable	Severe	Location: BATH; Comments: GFI OUTLET DAMAGED
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL; Comments: DETECTOR DID NOT ACTIVATE



Thursday
May 13, 1999

Part VI

**Department of
Housing and Urban
Development**

**Public Housing Assessment System
(PHAS) Technical Review of Physical
Inspection Results and Appeals of PHAS
Scores; Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4509-N-03]

Public Housing Assessment System (PHAS); Technical Review of Physical Inspection Results and Appeals of PHAS Scores

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public about the process for requesting and granting (1) technical reviews of the results of physical inspections of public housing properties conducted by HUD's Real Estate Assessment Center (REAC); and (2) appeals of PHAS scores. This notice does not apply to PHAS advisory scores.

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC, 20024; telephone Customer Service Center at 1-888-245-4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1-800 877-8339. Additional information is available from the REAC Internet Site at <http://www.hud.gov/reac>.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

The purpose of this notice is to provide additional information about the process for requesting and granting (1) technical reviews of the results of physical inspections of public housing properties conducted by the REAC; and (2) appeals of PHAS scores. There are specific circumstances when the REAC will consider conducting a technical review of an individual property's inspections results, and when an appeal of a PHAS score may be granted. This notice describes those circumstances and provides examples under the discussion of "Material Errors".

Basis for Technical Review of Physical Inspection Results

For each property inspected, the REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of an individual property, then the PHA may request a technical

review of the inspection results for that property.

A request for technical review of a property's physical inspection results must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by REAC no later than 15 days following the issuance of the physical inspection results to the PHA. The request must be accompanied by the PHA's clear and convincing evidence that an objectively verifiable and material error has occurred. A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will the REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (i.e., minor, major or severe).

The burden of proof rests with the PHA to provide evidence to the REAC that an objectively verifiable and material error has occurred to support its request for technical review of a property's physical inspection results. The documentation submitted by the PHA may be photographic evidence, written material from an objective source, such as a local fire marshal or building code official, or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

Upon receipt of a PHA's request for technical review of a property's inspection results, the REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If the REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then the REAC may take one or a combination of the following actions: (1) undertake a new inspection; (2) correct the physical inspection report; (3) issue a corrected physical condition score; and (4) issue a corrected PHAS score.

In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, the REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (i.e., high performer, standard performer, or troubled). For a PHA to understand how the REAC may conclude that a significant change may result from a new inspection, the PHA may use

REAC's document titled "Item Weights and Criticality Levels" to determine whether a significant change in the score may result from a new inspection. This document is included as Appendix 1 in the Notice of Physical Inspection Scoring, published elsewhere in today's **Federal Register**. The different severity levels of deficiencies (severe, major and minor) are defined in the REAC's "Dictionary of Deficiencies Definitions," which is included as Appendix 2 in the Notice of Physical Inspection Scoring. These two documents are also available on the REAC Internet Site at <http://www.hud.gov/reac>. If the REAC determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and the PHA's PHAS score and PHAS designation, the REAC shall issue a new PHAS score to the PHA.

Material Errors

Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are described below.

1. Building Data Error

A building data error occurs if the inspection includes the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

2. Unit Count Error

A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

3. Non-Existent Deficiency Error

A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

Basis for Appeal of PHAS Score

If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will

result in a significant change in the PHA's PHAS score and its designation (i.e., as troubled, standard, or high performer), the PHA may appeal its PHAS score. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to standard performer, or from standard performer to high performer).

To request an appeal of its PHAS score, a PHA must submit its request in writing to the Director of the Real Estate

Assessment Center and must be received by the REAC no later than 30 days following the issuance of the PHAS score to the PHA. The request for appeal must be accompanied by the PHA's clear and convincing evidence that an objectively verifiable and material error occurred. The REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If the REAC determines that an objectively verifiable and material error has been documented by the PHA, the REAC may undertake a new inspection of the property, or a

reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes that an error occurred in the scoring and the type of evidence submitted by the PHA to support its position that an error occurred.

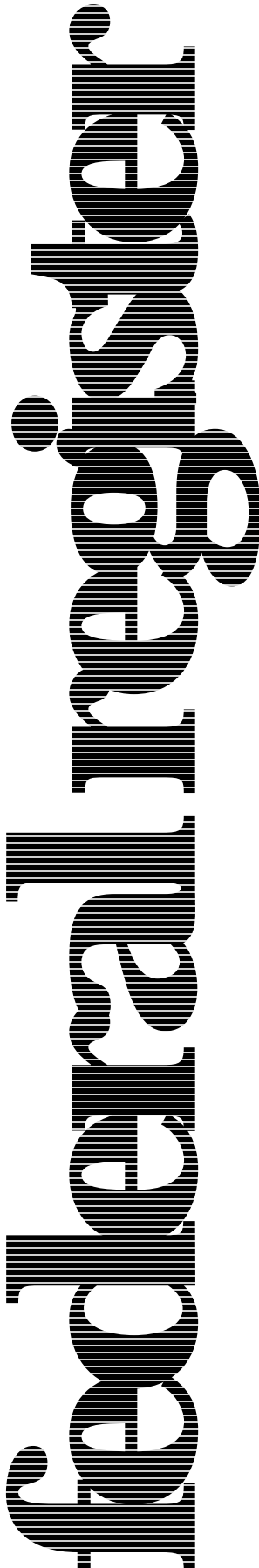
Dated: May 6, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 99-11913 Filed 5-12-99; 8:45 am]

BILLING CODE 4210-32-P



Thursday
May 13, 1999

Part VII

**Department of
Housing and Urban
Development**

**Public Housing Assessment System;
Financial Condition Scoring Process;
Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR 4509-N-04]

**Public Housing Assessment System;
Financial Condition Scoring Process****AGENCY:** Office of the Director of the
Real Estate Assessment Center, HUD.**ACTION:** Notice.**SUMMARY:** This notice provides
additional information to public
housing agencies and members of the
public about HUD's process for issuing
scores under the Financial Condition
Indicator of the Public Housing
Assessment System (PHAS).**FOR FURTHER INFORMATION CONTACT:** For
further information contact WandaFunk, the Real Estate Assessment
Center, Department of Housing and
Urban Development, 1280 Maryland
Avenue, SW, Suite 800, Washington DC,
20024; telephone Customer Service
Center, 1-888-245-4860 (this is a toll
free number). Persons with hearing or
speech impairments may access that
number via TTY by calling the Federal
Information Relay Service at (800) 877-
8339. Additional information is
available from the REAC Internet Site
<http://www.hud.gov/reac>.**SUPPLEMENTARY INFORMATION:****Purpose of This Notice**The purpose of this Notice is to
provide additional information about
the scoring process for PHAS Indicator#2, Financial Condition. Under the
PHAS, the financial condition score is
based on financial information reported
to HUD according to generally accepted
accounting principles (GAAP). GAAP
classifies accounting data according to
standard definitions. Of the total points
available for a PHAS score, a PHA may
receive up to 30 points under the PHAS
Indicator #2. The financial condition
score is included in the aggregate PHAS
score.The chart below shows the six
components that constitute the
Financial Condition Indicator and their
assigned points.**FINANCIAL CONDITION INDICATOR**

Scoring components	Measurement	Points
Quick Ratio (QR)	Short-term liquidity	9
Months Expendable Fund Balance (MEFB)	Adequacy of reserves	9
Days Receivable Outstanding (DRO)	Ability to collect payments of tenant receivables	4.5
Occupancy Loss (L)	Ability to realize potential rental income	4.5
Expense Management (EM)	Ability to control various expenses, including utilities, adminis- trative, maintenance, general and non-routine expenses.	1.5
Net Income as a Percentage of Fund Balance (N)	Profitability against the current year's operations	1.5

The values of the six components of the Financial Indicator calculated from the financial data comprise the overall financial assessment of the PHA. The components and their relative importance to the total financial score are the result of studies of PHA financial performance and of industry portfolio management techniques to identify the most appropriate financial measures to gauge a PHA's financial position and financial management. These components represent measures that are appropriate benchmarks in any

residential real estate environment. The scoring assigned within each component is based on the distributions of that component's values and the relative relationship between the components and the PHA's overall financial performance.

Under the PHAS, the components that make up the Financial Condition Indicator are approached in the same manner for GAAP as they were for non-GAAP financial information although the thresholds may change as a result of the conversion to GAAP. For example,

a good Quick Ratio under the current basis of accounting (non-GAAP) for a small PHA may be 6 to 1 and receive the maximum 9 points. In contrast, under GAAP a good Quick Ratio may be 5 to 1 and also get the maximum 9 points. Thus, to the extent that a PHA's performance relative to its peers does not change, its score will not be affected by the conversion to GAAP. The GAAP conversion schedule by PHAs fiscal year end, shown below, is reprinted from the PHAS final rule published on September 1, 1999.

GAAP CONVERSION SCHEDULE

Fiscal year end dates for PHAs	Unaudited GAAP finan- cial data to HUD by:	Audit reports due to HUD by:
9/30/99	11/30/99	6/30/00
12/31/99	2/28/00	9/30/00
3/31/00	5/31/00	12/31/00
6/30/00	8/31/00	3/31/01

GAAP Reporting Method

Financial data for GAAP scoring is currently collected in paper form from audited financial data submitted by PHAs and entered into a database by REAC staff. PHAs, with fiscal years ending September 30, 1999, and later, will submit their unaudited financial

data electronically using the Financial Data Schedule (FDS), within 60 days of their fiscal year end. This submission will be reviewed by REAC for reasonableness. To the extent that an audit is required for a PHA under OMB Circular A-133, a PHA will submit its

audited data using the FDS within nine months of the fiscal year end.

Program Funds

The PHAS financial assessment is based on the entity-wide operations of a PHA, which includes financial information on Section 8, Community

Development Block Grants, and other HUD funding in its calculations, as well as funds from non-HUD sources.

GAAP Scoring Approach

Under PHAS, the components of the PHAS Financial Indicator were developed that both fairly and accurately assess a PHA's financial performance and financial management. As part of the development, the components were tested to establish the correlation between PHA performance under each component and the fiscal health of a PHA. As part of the development, PHAs were evaluated and assigned scores based a PHA's performance relative to its peers. In other words, all PHAs as a group determine the mean score and each PHA is then ranked accordingly. This peer assessment approach, which was formulated following extensive economic and financial analysis, examination of well-accepted business principles, and discussions with PHA industry representatives and PHA staff, provides an equitable means of measuring the financial performance of PHAs.

Comparable Scoring Systems

HUD's financial scoring process is similar to those already undertaken in the mortgage housing and securities industries. Fannie Mae, the mortgage housing industry leader, developed an assessment system with financial indicators similar to those contained in HUD's financial assessment of PHAs, such as vacancy, reserve balances, and net income. Like HUD, Fannie Mae uses these indicators to rank properties and identify those which require further attention. In the securities area, Standard & Poors conducts peer assessment of a company's operational capabilities and cash flows relative to their peers. Among federal agencies, the Department of Health and Human Services (HHS) contracts with state and local entities to perform financial audits of nursing homes and hospitals participating in the federal Medicare program. Based on these financial audits, HHS determines the continued eligibility of these health service providers in the Medicare program.

GAAP Scoring Processes

GAAP-based scores are produced using data contained in the Financial Data Schedule (FDS). The GAAP-based financial data are first used to calculate six financial components that measure various aspects of financial health, such as short-term liquidity, expense management, and collection of receivables. Each PHA is awarded

points for each component according to its performance relative to its peers. Peer groupings are established according to the size of the PHA, based on the number of public housing units operated. Peer groupings are as follows:

- Very Small (0–49 units)
- Small (50–249 units)
- Low Medium (250–499 units)
- High Medium (500–1249 units)
- Large (1250 + units)

A PHA is assigned a score for each of the six components of the Financial Indicator based on its component value relative to its peers. The minimum number of points (zero) and the maximum number of points can each be achieved over a range of values. This system allows PHAs to target a range of values which they want to avoid and target one value which they should strive to achieve. Aside from these extremes, points are assigned to component values along a continuous linear function. This means that each component value will receive a different number of points. This system ("semi-continuous scoring") ensures that points are awarded equitably to PHAs along the distribution of component values because, in most cases, small differences in component values result in only small differences in the scores of the individual components. Therefore, two PHAs of a similar size whose values for its financial condition components are in close proximity will receive only slightly different scores to capture their performance relative to each other.

The number of points assigned to each component value or range of values is based on where the thresholds for that component are set. The thresholds separate distinct ranges of scores along the distribution of component values. The thresholds and their associated scores are estimated based on well-accepted business principles and statistical distributions of values within the peer groupings of the PHAs.

Business Principles

Scoring of certain of the components follows generally recognized business principles. These principles indicate that there are certain absolute thresholds below which component values are clearly financially unacceptable and component values below that point should result in a score of zero. These principles are used in scoring the Quick Ratio and Months Expendable Fund Balance components. For both of these components, a value of less than one is financially unacceptable, regardless of PHA size, and therefore merits a score of zero.

Statistical Distributions

The remaining thresholds are estimated by examining the distributions of component values by peer group. For the four most significant components (Quick Ratio, Months Expendable Fund Balance, Days Receivable Outstanding, and Occupancy Loss), thresholds are set such that approximately 50 percent of the distribution receives the maximum number of points, as long as 50 percent of the distribution have acceptable values for the component. Thus, the highest number of points are awarded to the PHAs whose financial measures are most reasonable both relative to their peers and in an absolute business sense. The specific percentiles that make up this 50 percent of PHAs are established by identifying natural breakpoints along the distributions. For example, for the Quick Ratio and Months Expendable Fund Balance, these breakpoints fall at approximately the 30th and 80th percentiles. The remaining two components (Expense Management and Net Income as a Percentage of Fund Balance) assign zero points to PHAs that fall only in the extreme outer ranges of the distribution of values, and award 1.5 points to the remaining PHAs.

Audit Information

The information collected from the annual audit report pertains to the type of audit opinion, details of the audit opinion, and the presence of reportable conditions and material weaknesses. This information will be used as a basis for accepting or adjusting financial component scores. If the auditor's opinion is other than unqualified, points will be deducted from the financial components to determine the PHA's financial score. The points have been established by REAC using a system that considers the seriousness of the audit qualification and limits the deducted points to a reasonable portion of the PHA's available score.

Reportable conditions and material weaknesses are considered to be audit flags, alerting REAC to an internal control weakness or an instance of noncompliance with Federal laws and regulations. These flags also have the potential to adjust the PHA's financial component scores, based on the seriousness of the reported issue. REAC will review the audit and internal control flags to determine the significance as it directly pertains to the assessment of the PHA's financial condition. If the flag has no effect on the financial components or the overall financial condition of the PHA as it

relates to the PHAS assessment, the score will not be adjusted.

There are two types of adjustments related to audited financial information. The first type deals with material differences between the unaudited and audited financial information reported to HUD. The second deals with the audit flags and reports that result from the audit itself.

The purpose of a comparison of the ratios and scores resulting from the current year's unaudited Financial Data Schedule submission to the ratios and scores resulting from the current year's audited submission is to:

- Identify material changes in ratio calculation results and/or scores from the unaudited submission to the audited submission;
- Identify PHA's that consistently provide materially different data from their unaudited submission to their audited submission;
- Assess or alleviate penalties associated with the inability to provide reasonably accurate unaudited data within the required time period.

This review process will only be performed for the audited submission. In addition, it is only applicable to PHAs whose overall PHAS designation (high, standard or troubled) was reclassified to a lesser designation based on the audited submission and the reclassification was necessary because of a material change in the reported financial data affecting one or more of the six components. Materiality for purposes of this review is based on a formula within PHAS and varies based on the size and funding level of the PHA. Therefore, the materiality threshold may vary from PHA to PHA, even within the same peer group.

REAC views the transmission of materially inaccurate unaudited financial data as a more serious

condition than the late submission of unaudited data. Therefore, the penalties assessed for material differences between the unaudited and audited submission have been designed to encourage PHAs to assure financial data is as reliable as possible at the 60 day submission. The penalties to be assessed are based on the significance of the reclassification, assuming the financial data reported meets the materiality threshold. For each designation level that the PHA has been reduced, points will be deducted from the PHA's overall FASS score. The following table summarizes the point reductions.

Designation reclassification	Percent of FASS points deducted
High to Standard	1
High to Marginal	2
High to Troubled	3
Standard to Marginal	1
Standard to Troubled	2
Marginal to Troubled	1

The FASS system will automatically deduct the applicable points and this reduction will trigger the REAC analyst review.

The purpose of a review of the audit and internal control flags is to adjust the financial score as a result of the audit. These flags are collected by using the OMB A-133 Data Collection Form. This form is completed by the PHA both for the unaudited and audited submissions. At the time of the unaudited submission the form is used as a self-assessment tool and should reflect the PHA's knowledge of their financial and internal control condition and should acknowledge their understanding of what the auditor will report. In the PHAS final rule, HUD discussed the review of audit and internal control flags as follows, and also included the

following chart. (See 63 FR 46607, September 1, 1998.)

As part of the analysis of the financial health of the PHA including assessment of the potential or actual waste, fraud or abuse at a PHA, HUD will look to the Audit Opinion to provide an additional basis for accepting or adjusting financial indicator scores. The following is a summary of the types of audit opinions and the number of total financial points that will be deducted if a PHA receives such an audit opinion from its IPA:

Type of flag	PHAS points deducted
Unqualified Opinion	0
No audit opinion	30
Adverse opinion	30
Disclaimer of opinion	30
Qualified opinion	*
Going concern opinion	30
Material weakness in internal control	*
Reportable condition	*
Findings of non-compliance and/or questioned costs	*
Indicator outlier analyses	*

***Note:** See subsequent table titled "Audit Flags and Tier Classification" for FASS points to be deducted.

If the OMB A-133 Data Collection Form indicates that the auditor's opinion will be other than unqualified, PHAS will automatically deduct the appropriate points based on the above table. The points have been established by REAC using a three-tier system. The tiers are meant to give consideration to the seriousness of the audit qualification and to limit the deducted points to a reasonable portion of the PHA's total, actual score. The tiers, as established by REAC, are also defined below.

AUDIT FLAG TIERS

Tier	FASS points deducted
Tier 1	Maximum reduction: Lesser of 30 points or 100 percent of the PHA's total unadjusted FASS score.
Tier 2	Maximum reduction: 3 points or 10 percent of the PHA's total unadjusted FASS score.
Tier 3	Maximum reduction: 1.5 points or 5 percent of the PHA's total unadjusted FASS score. This maximum is cumulative and not to be assessed for each audit or internal control flag.

AUDIT FLAGS AND TIER CLASSIFICATIONS

Audit flag	Tier classification
Unqualified opinion	None
No audit opinion	Tier 1
Adverse opinion	Tier 1
Disclaimer of opinion	Tier 1
Qualified opinion:	
1. GAAP qualifications	
• Change in accounting principle	Tier 3

AUDIT FLAGS AND TIER CLASSIFICATIONS—Continued

Audit flag	Tier classification
• Change in accounting estimate	Tier 3
• Change in accounting method	Tier 3
• Departures from GAAP	Tier 2
• Financial statements using basis other than GAAP	Tier 1
• Exclusion of alternate accounting for an account or group of accounts	Tier 2
• Inconsistently applied GAAP	Tier 2
• Omissions/Inadequate Disclosure	Tier 2
2. GASS—Scope Limitations	Tier 2
• Imposed by management	Tier 2
• Imposed by circumstance	Tier 3
• Year 2000 (add back)	Tier 3
3. Report on major program compliance	Tier 3
4. Report on internal control	Tier 3
Accounting principles used caused the financial statements to be materially misstated	Tier 2
Inadequate records	Tier 2
Going concern	Tier 1
Material noncompliance disclosed	Tier 2
• Internal control weakness	Tier 3
• Compliance	Tier 3
• Opinion on Supplemental schedules	Tier 3
Reportable condition	
• Internal control	Tier 3
• Compliance	Tier 3

The graphs shown in Appendix 1 depict the approximate GAAP-based scoring functions used for each of the six components of the Financial Indicator.

Appendix 2 provides estimated GAAP-based threshold values and associated scores for each component and peer group, based on the data pool as of April 15, 1999. These GAAP thresholds are preliminary and are based upon financial data obtained for

a limited number of PHAs currently reporting under GAAP. The thresholds established for GAAP-based scores will be re-assessed on a quarterly basis to ensure their statistical validity as the data collected indicates a shift in distributions and any modifications to the thresholds will be communicated through a Notice. However, the financial components and component calculations will remain the same and the component scores for a PHA will

continue to be established on a peer assessment basis. Thus, if a PHA's performance remains consistent relative to its peers, the PHA's score will not be affected by threshold changes.

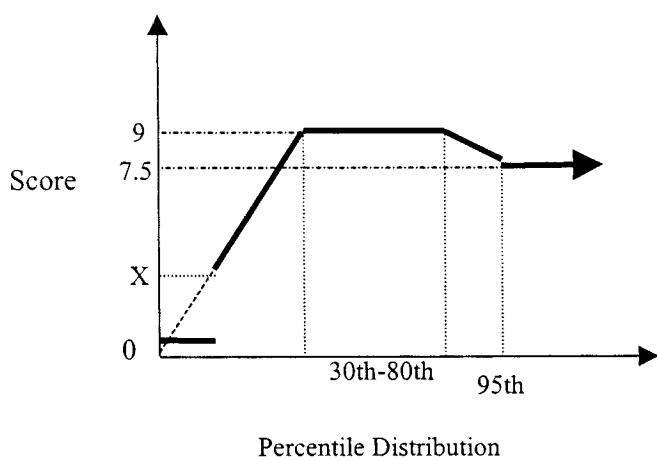
Dated: May 6, 1999.

Barbara L. Burkhalter,

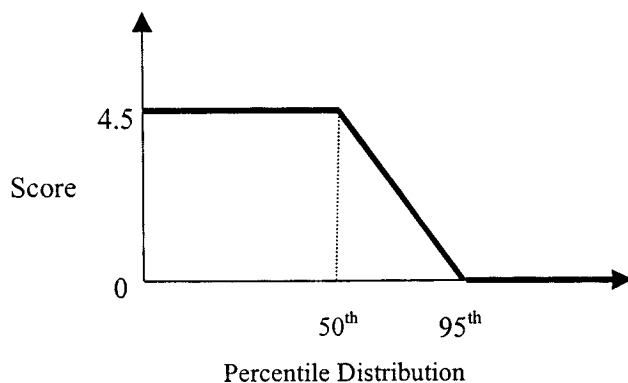
Deputy Director, Real Estate Assessment Center.

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Appendix 1 – Graphs of GAAP-Based Financial Indicators

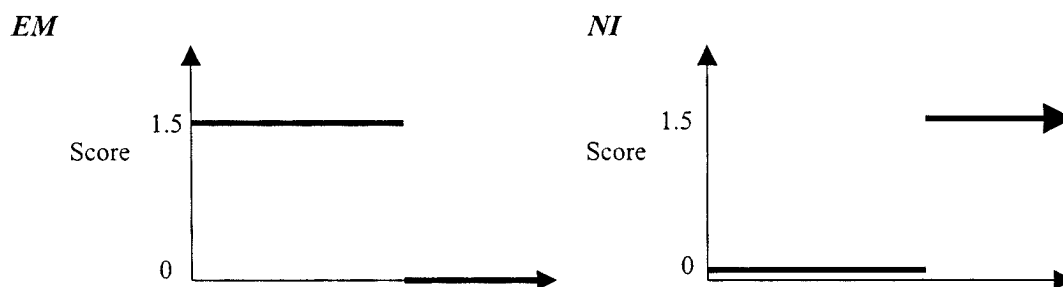
Graph 1: *QR & MEFB*

The scoring structure depicted above is established based on the distribution of data for each peer group. For both QR and MEFB, a PHA receives zero points for indicator values of less than one. With a value of one, they receive X points, which is determined by the distribution of the data, and, therefore, varies by size category. The maximum number of points is received between approximately the 30th and 80th percentiles. PHAs with values falling beyond the upper bound of this range receive incrementally fewer points because they have exceeded the acceptable levels of liquidity or reserves to operate optimally.

Graph 2: *OL & DRO*

For OL and DRO, the maximum number of possible points is 4.5, which is received up to approximately the 50th percentile. For values beyond approximately the 95th percentile, the PHA receives zero points.

Graph 3: EM & NI



For both EM and NI, a PHA can receive either 1.5 or zero points. The threshold for EM is set at 1.645 standard deviations (approximately the 95th percentile) from the mean of each distribution (which means it is in the top five percent of values for that distribution), and thus varies by size category, whereas for NI it is set at -10% across all size categories.

Appendix 2 – Threshold Tables for GAAP Scoring

These tables can be interpreted in the following manner:

- o Identify a size category for an indicator;
- o The rows under that size category identify ranges of possible values for that indicator; and
- o The column to the right labeled “Score” identifies the score or range of scores that is awarded to each range of indicator values for that size category.

Quick Ratio (QR)*					
Very Small	Score	Small	Score	Low Medium	Score
QR<1	0	QR<1	0	QR<1	0
QR=1	2.6	QR=1	2.6	QR=1	2.6
1<QR<3.5	2.6<Score<9	1<QR<3.5	2.6<Score<9	1<QR<3.5	2.6<Score<9
3.5≤QR≤12	9	3.5≤QR≤8	9	3.5≤QR≤7.5	9
12<QR<15	9>Score>7.5	8<QR<13	9>Score>7.5	7.5<QR<11	9 >Score>7.5
QR≥15	7.5	QR≥13	7.5	QR≥11	7.5

High Medium	Score	Large	Score
QR<1	0	QR<1	0
QR=1	3	QR=1	3.6
1<QR<3	3<Score<9	1<QR<2.5	3.6<Score<9
3≤QR≤6.5	9	2.5≤QR≤5.5	9
6.5<QR<8	9 >Score>7.5	5.5<QR<7	9 >Score>7.5
QR≥8	7.5	QR≥7	7.5

MONTHS EXPENDABLE FUNDS BALANCE (MEFB)*					
VERY SMALL	SCORE	SMALL	SCORE	LOW MEDIUM	SCORE
MEFB<1	0	MEFB<1	0	MEFB<1	0
MEFB=1	1.3	MEFB=1	1.8	MEFB=1	2
1<MEFB<7	1.3<SCORE<9	1<MEFB<5	1.8<SCORE<9	1<MEFB<4.5	2<SCORE<9
7≤MEFB≤15	9	5≤MEFB≤13	9	4.5≤MEFB≤12	9
15<MEFB<20	9 >SCORE>7.5	13<MEFB<18	9 >SCORE>7.5	12<MEFB<15	9 >SCORE>7.5
MEFB≥20	7.5	MEFB≥18	7.5	MEFB≥15	7.5

HIGH MEDIUM	SCORE	LARGE	SCORE
MEFB<1	0	MEFB<1	0
MEFB=1	2	MEFB=1	3
1<MEFB<4.5	2<SCORE<9	1<MEFB<3	3<SCORE<9
4.5≤MEFB≤11	9	3≤MEFB≤11	9
11<MEFB<13	9 >SCORE>7.5	11<MEFB<13	9 >SCORE>7.5
MEFB≥13	7.5	MEFB≥13	7.5

DAYS RECEIVABLE OUTSTANDING (DRO)*					
VERY SMALL	SMALL	LOW MEDIUM	HIGH MEDIUM	LARGE	SCORE
DRO≤2	DRO≤3	DRO≤7	DRO≤8	DRO≤12	4.5
2<DRO<18	3<DRO<20	7<DRO<23	8<DRO<23	12<DRO<25	4.5>SCORE>0
DRO≥18	DRO≥20	DRO≥23	DRO≥23	DRO≥25	0

OCCUPANCY LOSS (OL)*					
VERY SMALL	SMALL	LOW MEDIUM	HIGH MEDIUM	LARGE	SCORE
OL≤4.5%	OL≤4.5%	OL≤5.5%	OL≤5.5%	OL≤7%	4.5
4.5<OL<12%	4.5<OL<12%	5.5<OL<14.5%	5.5<OL<15%	7<OL<15%	4.5>SCORE>0
OL≥12%	OL≥12%	OL≥14.5%	OL≥15%	OL≥15%	0

NET INCOME (NI)*					
VERY SMALL	SMALL	LOW MEDIUM	HIGH MEDIUM	LARGE	SCORE
NI<-10%	NI<-10%	NI<-10%	NI<-10%	NI<-10%	0
NI≥-10%	NI≥-10%	NI≥-10%	NI≥-10%	NI≥-10%	1.5

EXPENSE MANAGEMENT

THE COMPONENTS OF THE EXPENSE MANAGEMENT ARE EXPRESSED IN DOLLARS PER UNIT PER MONTH. THE REAC IS ALSO EXAMINING THE IMPACT OF SEASONAL AND GEOGRAPHIC VARIATIONS ON THE EXPENSE INDICATORS. IF THE REAC'S ANALYSIS FINDS A SIGNIFICANT IMPACT ON PHA EXPENSES OF THESE REGIONAL DIFFERENCES, REGIONAL PEER GROUPINGS MAY BE ADDED TO THE SCORING OF THE EXPENSE MANAGEMENT INDICATOR.

THRESHOLDS FOR FOUR OF THE SIX COMPONENTS OF THE EXPENSE MANAGEMENT INDICATORS ARE LISTED BELOW. THRESHOLDS FOR TENANT SERVICES AND PROTECTIVE SERVICES WILL BE SET AS MORE INFORMATION IS SUBMITTED.

ADMINISTRATIVE EXPENSE (AE)*					
<u>VERY SMALL</u>	<u>SMALL</u>	<u>LOW MEDIUM</u>	<u>HIGH MEDIUM</u>	<u>LARGE</u>	<u>SCORE</u>
<u>AE<\$81</u>	<u>AE<\$75</u>	<u>AE<\$65</u>	<u>AE<\$71</u>	<u>AE<\$82</u>	<u>1.5</u>
<u>AE≥\$81</u>	<u>AE≥\$75</u>	<u>AE≥\$65</u>	<u>AE≥\$71</u>	<u>AE≥\$82</u>	<u>0</u>

UTILITIES EXPENSE (UE)*					
<u>VERY SMALL</u>	<u>SMALL</u>	<u>LOW MEDIUM</u>	<u>HIGH MEDIUM</u>	<u>LARGE</u>	<u>SCORE</u>
<u>UE<\$74</u>	<u>UE<\$93</u>	<u>UE<\$110</u>	<u>UE<\$120</u>	<u>UE<\$135</u>	<u>1.5</u>
<u>UE≥\$74</u>	<u>UE≥\$93</u>	<u>UE≥\$110</u>	<u>UE≥\$120</u>	<u>UE≥\$135</u>	<u>0</u>

ORDINARY MAINTENANCE EXPENSE (OE)*					
<u>VERY SMALL</u>	<u>SMALL</u>	<u>LOW MEDIUM</u>	<u>HIGH MEDIUM</u>	<u>LARGE</u>	<u>SCORE</u>
<u>OE<\$89</u>	<u>OE<\$88</u>	<u>OE<\$94</u>	<u>OE<\$106</u>	<u>OE<\$129</u>	<u>1.5</u>
<u>OE≥\$89</u>	<u>OE≥\$88</u>	<u>OE≥\$94</u>	<u>OE≥\$106</u>	<u>OE≥\$129</u>	<u>0</u>

<u>GENERAL EXPENSE (GE)*</u>					
<u>VERY SMALL</u>	<u>SMALL</u>	<u>LOW MEDIUM</u>	<u>HIGH MEDIUM</u>	<u>LARGE</u>	<u>SCORE</u>
<u>GE<\$54</u>	<u>GE<\$59</u>	<u>GE<\$62</u>	<u>GE<\$65</u>	<u>GE<\$70</u>	<u>1.5</u>
<u>GE≥\$54</u>	<u>GE≥\$59</u>	<u>GE≥\$62</u>	<u>GE≥\$65</u>	<u>GE≥\$70</u>	<u>0</u>

* THE ESTIMATED GAAP THRESHOLDS WERE BASED ON DATA FROM FINANCIAL INFORMATION FROM A LIMITED NUMBER OF PHAS CURRENTLY REPORTING UNDER GAAP AS OF APRIL 15, 1999. THE PHA FINANCIAL STATEMENTS HAD FISCAL YEAR ENDS RANGING BETWEEN 1996 AND 1998. AS MORE DATA IS ENTERED INTO THE SYSTEM, THESE THRESHOLDS WILL BE RE-ASSESSED TO BETTER REFLECT THE DATA DISTRIBUTIONS.

[FR Doc. 99-11914 Filed 5-12-99; 8:45 am]

BILLING CODE 4210-13-C



Thursday
May 13, 1999

Part VIII

**Department of
Housing and Urban
Development**

**Public Housing Assessment System;
Management Operations Scoring Process;
Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****[Docket No. FR-4509-N-05]****Public Housing Assessment System;
Management Operations Scoring
Process****AGENCY:** Office of the Director, Real
Estate Assessment Center, HUD.**ACTION:** Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public, regarding HUD's Management Operations process for issuing scores to PHAs under the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at 1-888-245-4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Additional information is available from the REAC Internet Site, <http://www.hud.gov/reac>.

SUPPLEMENTARY INFORMATION:**1. Purpose of This Notice**

The purpose of this notice is to provide additional information about the scoring process for PHAS Indicator #3, Management Operations. The purpose of the Management Operations assessment is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

2. Changes From PHMAP to PHAS

The PHAS assessment of a PHA's management operations utilizes six of the eight current PHMAP indicators:

- Vacancies;
- Capital Fund;
- Rents uncollected;
- Work orders;
- Inspection of units and systems;

and

- Security.

The adjustment for physical condition and/or neighborhood environment will be made under PHAS Indicator #1, Physical Condition. The same definitions and exemptions that apply to the PHMAP also apply to the PHAS. The current PHMAP indicator for financial management is assessed under PHAS Indicator #2, Financial Condition; and the current PHMAP indicator #7 for resident services is assessed under PHAS Indicator #4, Resident Service and Satisfaction.

There are certain differences between the PHMAP score and the PHAS score calculated for a PHA's management operations. Under the PHAS, modifications and exclusions no longer apply. PHAs will certify to sub-indicator #2, Capital Fund, and all PHAs will certify to and be scored on sub-indicator #6, Security, under PHAS Indicator #3.

**3. Submission of Management
Operations Certification**

Under the PHAS, a PHA is required to electronically submit certification on its performance under each of the management operations sub-indicators. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, a PHA may go to the nearest HUD Public and Indian Housing program

office and assistance will be given to the PHA to transmit its Management Operations certification. If circumstances preclude a PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its Management Operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that the REAC receives a request for manual submission in writing 60 calendar days prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. The REAC will respond to such a request and will manually forward its determination in writing to the PHA.

4. Elements of Scoring

The Management Operations Indicator score provides an assessment of each PHA's management effectiveness. The computation of the score under this PHAS Indicator utilizes data that was submitted for PHMAP and requires three main calculations, which are:

- Scores are first calculated for all of the components that have been submitted by the PHA;
- Based upon the component scores, a score is then calculated for each sub-indicator; and
- From the six sub-indicator scores, an indicator score is then calculated.

The three calculations are performed on the basis of the following:

- The weights of the six sub-indicators and/or components, which are listed in Table 1; and
- The grades assigned under PHMAP for each sub-indicator and/or component.

TABLE 1.—MANAGEMENT OPERATIONS SUB-INDICATORS AND COMPONENTS WEIGHTS

Sub-indicator	Sub-indicator weight	Component	Component weight
Vacancy Rate/Progress to Reduce (PHMAP Indicator #1)	8.0	Vacancy Rate	4.0
Capital Fund (PHMAP Indicator #2)	6.0	Unit Turnaround Time	4.0
		Unexpended Funds	1.0
		Timeliness of Fund Obligation	1.5
		Contract Administration	1.0
		Quality of Physical Work	2.0
		Budget Controls	0.5
Rents Uncollected (PHMAP Indicator #3)	4.0		
Work Orders (PHMAP Indicator #4)	4.0	Emergency Work Orders	2.0
Inspections of Units and Systems (PHMAP Indicator #5)	4.0	Non-Emergency Work Orders	2.0
		Inspection of Units	2.0
		Inspections of Systems	2.0
Security (PHMAP Indicator #8).	4.0	Tracking/Reporting Crime-Related Problems	1.0
		Screening of Applicants	1.0
		Lease Enforcement	1.0

TABLE 1.—MANAGEMENT OPERATIONS SUB-INDICATORS AND COMPONENTS WEIGHTS—Continued

Sub-indicator	Sub-indicator weight	Component	Component weight
		Grant Program Goals	1.0

If the PHAS Capital Fund sub-indicator (PHMAP Indicator #2) is not applicable, then the 6 points for that sub-indicator are redistributed among the other five sub-indicators. This is accomplished by multiplication of 30/24 or 1.25, which is 125 percent of the original weights. The new weight for the sub-indicator "Vacancy Rate/Progress to Reduce" would be 10.0, and the new weight for the other four sub-indicators would be 5.0.

The PHMAP grades for each sub-indicator/component are assigned values to indicate the percentage of the sub-indicator/component weight that will be awarded in the calculations. The assigned values for the PHMAP grades, which are listed in Table 2, are the same for each sub-indicator/component that is being assessed. For example, a PHA with an E for the component "Inspection of Units and Systems" would receive 30% of the component weight of 2, for a score of 0.6 for the component.

TABLE 2.—POSSIBLE GRADES

Grades	Value
A	1.00.
B	0.85.
C	0.70.
D	0.50.
E	0.30.
F	0.00.
NA—Data not submitted.	NA—No value assigned.

Calculations under the PHAS Management Operations Indicator are performed as follows:

Component Score. The component score equals its weight multiplied by the value of the grade for the PHA, unless no data exists for an assessment of the PHA for the component. For example, a PHA with an E for the component Inspection of Units and Systems would receive 30% of the component weight of 2, for a score of 0.6 for the component.

Sub-indicator Score. The sub-indicator score is the sum of the component scores with the weight of non-assessed (NA) sub-indicators being proportionately redistributed across sub-indicators that have been assessed.

If the Capital Fund sub-indicator (PHMAP indicator #2) is not applicable (the PHA does not have a Capital Fund Program), then the 6 points for that sub-indicator are redistributed among the other five sub-indicators in the calculation of the indicator score.

If no data was submitted for an assessment of the entire sub-indicator (excluding the Capital Fund sub-indicator), then for PHAS scores, the sub-indicator score is equal to the appropriate sub-indicator weight with an asterisk appended to it. The asterisk indicates the score is not a true assessment of the PHA's effectiveness for the sub-indicator.

Indicator Score. The Indicator score equals the sum of the sub-indicator scores. If the PHA does not have a

Capital Fund Program, the indicator score equals the sum of the five other sub-indicator scores multiplied times 30/24 or 1.25, which is 125 percent of the original weight.

5. Examples of Score Computations

An Example of Computing a Sub-Indicator Score With a Non-Assessed Component.

The following provides an example for the calculation of a Capital Fund sub-indicator score and its component scores, when the Quality of Physical Work component has not been assessed. For this example, Table 3 provides the necessary information, which is:

- The weight of the Capital Fund sub-indicator components from Table 1;
- The sample grade for each component;
- The value of each grade from Table 2;
- The calculations for the component score; and
- The component scores.

The component score is calculated in this table by multiplying the weights by the values in Table 3. These scores are included in the PHAS Report. Note that for reporting purposes, all scores are rounded to one decimal place.

TABLE 3.—EXAMPLE ASSESSMENT OF THE CAPITAL FUND SUB-INDICATOR

Component	Weight	Grade	Value	Calculations	Score
#1 Unexpended Funds	1.0	A	1.0	(1.0) times (1.0) = 1.01.	1.0
#2 Timeliness of Fund Obligation	1.5	A	1.0	(1.5) times (1.0) = 1.5	1.5
#3 Contract Administration	1.0	C	0.7	(1.0) times (0.7) = 0.7	0.7
#4 Quality of Physical Work	2.0	NA	NA	NA	NA
#5 Budget Controls	0.5	F	0.0	(0.5) times (0.0) = 0.0	0.0

In this example, the 4th component has not been assessed for PHMAP indicator #2. Consequently, the weight of the non-assessed component needs to be redistributed proportionately across

assessed components in order to calculate the Capital Fund sub-indicator score. This redistribution is accomplished by multiplying the sum of the component scores by 6 (the weight

of the sub-indicator) and dividing this result by the sum of the weights of the components that have been assessed. This calculation for the Capital Fund sub-indicator score is provided below:

$$\text{Capital Fund Score} = \frac{(1.0 + 1.5 + 0.7 + 0.0) \text{ times } (6.0)}{1.0 + 1.5 + 1.0 + 0.5} = 4.8$$

An Example of Computing the Indicator Score for a PHA Without a Capital Fund Program and That Has Less Than 250 Units. For this example, the PHA's sub-indicator scores are:

- The Vacancy Rate/Progress to Reduce score equals 6.8;
 - The Capital Fund sub-indicator was not assessed (NA);
 - The Rents Uncollected score equals 4.0;
 - The Work Orders score equals 2.8;
 - The Inspection of Units and Systems score equals 3.7; and
 - The Security score equals 4.0*.
- For this PHA, the Indicator score is calculated by the following formula;

$$\text{Management Operations Indicator Score} = \frac{(6.8 + 4.0 + 2.8 + 3.7 + 4.0) \text{ times } (30.0)}{24} = 26.6$$

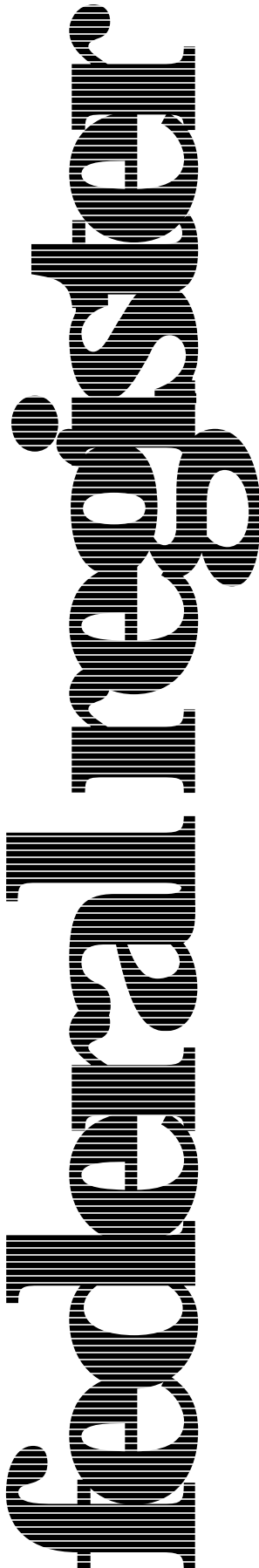
Dated: May 6, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 99-11915 Filed 5-12-99; 8:45 am]

BILLING CODE 4210-32-P



Thursday
May 13, 1999

Part IX

**Department of
Housing and Urban
Development**

**Public Housing Assessment System;
Resident Service and Satisfaction Scoring
Process; Notice**

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

[Docket No. FR 4509–N–06]

Public Housing Assessment System;
Resident Service and Satisfaction
Scoring Process

AGENCY: Office of the Director, Real
Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides
additional information to public
housing agencies, and members of the
public, regarding HUD's process for
issuing scores under the Resident
Service and Satisfaction Indicator of the
Public Housing Assessment System
(PHAS).

FOR FURTHER INFORMATION CONTACT: For
further information contact Wanda
Funk, Real Estate Assessment Center,
Department of Housing and Urban
Development, 1280 Maryland Avenue,
SW, Suite 800, Washington DC, 20024;
telephone Customer Service Center at 1–
888–245–4860 (this is a toll free
number). Persons with hearing or
speech impairments may access that
number via TTY by calling the Federal
Information Relay Service at (800) 877–
8339. Additional information is
available from the REAC Internet Site,
<http://www.hud.gov/reac>.

SUPPLEMENTARY INFORMATION:

1. Purpose of This Notice

The purpose of this notice is to
provide additional information about
the scoring process for PHAS Indicator
#4, Resident Service and Satisfaction.
The purposes of the Resident Service
and Satisfaction assessment are to
measure the level of resident
satisfaction with living conditions at
their public housing, to facilitate
positive interaction and communication
between public housing agencies
(PHAs) and residents, and to guide
PHAs in recognizing areas of concern
identified by residents in survey
responses. The Resident Service and
Satisfaction assessment is an important
indicator of a PHA's performance.

Of the total 100 points available for a
PHAS score, a PHA may receive up to
ten points under PHAS Indicator #4.
Unlike PHAS Indicators #1, #2, or #3,
PHAs will *not* be designated as
“troubled” for a failing score under
Indicator #4 in accordance with 24 CFR
902.67. The Resident Service and
Satisfaction score, however, is included
in the aggregate PHAS score.

2. Elements of Scoring

The score of the Resident Service and
Satisfaction assessment for all PHAs
will be based upon two components,
plus a threshold requirement.

First Component

The first component will be the
aggregate score of the survey results.

Second Component

The second component will be a score
based on the PHA's certification that
plans for survey implementation and
follow-up corrective actions have been
prepared by the PHA and have or will
be acted upon. HUD's PHAS regulation
at 24 CFR 902.53 provides that the
second component will be a point score
based on the level of implementation
and follow-up or corrective actions
based on the survey results.

Each of the components are worth five
points, for a total of ten points, as
outlined under Indicator #4 in the PHAS
final rule (24 CFR 902.53). A PHA will
receive a passing score if it receives at
least six points of the available ten
points. As noted earlier in this notice,
however, a failing score under this
Indicator will not cause a PHA to be
designated as troubled.

Threshold Requirement

A PHA will not receive any points
under PHAS Indicator #4 if the survey
process is not managed as directed by
HUD or the survey results are
determined to have been altered. The
threshold requirement is subject to
verification.

The following chart shows the scoring
components and point range.

Scoring components	Point range
Component One—Survey Results (5 points):	
Maintenance and Repair Section	0–1.
Communication Section	0–1.
Safety Section	0–1.
Services Section	0–1.
Neighborhood Section	0–1.
Component Two—Implementation/Follow-Up Plan (5 points):	
Survey Implementation Plan	0 or 2.
Survey Follow-up Plan	0 or 3.
Total Possible Score	10.

3. Scoring Process

The scoring process for the Resident
Service and Satisfaction Indicator is
dependent upon electronic updating,
submission and certification of
information by PHAs. Although this
notice discusses these electronic steps
in terms of requirements, HUD has
made allowance for manual submission
of information, as discussed later in the
notice.

Unit Address Update and Verification

The scoring process for PHAS
Indicator #4 begins with ensuring
accurate information about the PHA's

units. PHAs will be required to
electronically update unit address
information initially obtained by the
REAC from the recently revised form
HUD–50058, Family Report. The REAC
will supply a list of current units (listed
by development) to PHAs via the
internet. PHAs will be asked to make
additions, deletions and corrections to
their unit address list. After updating
the list, PHAs must verify that the list
of unit addresses under their
jurisdiction is complete. Any incorrect
or obsolete address information will
have a detrimental impact on the survey
results. A statistically valid number of
residents cannot be selected to

participate in the survey if the unit
addresses are incorrect or obsolete. If a
PHA does not verify the address
information within 30 calendar days of
submission of the list of current units to
the PHA by the REAC, and the address
information is not valid, the REAC will
not be able to conduct the survey at that
PHA. Under those conditions, the PHA
would not receive any points for the
PHAS Resident Service and Satisfaction
Indicator.

Electronic Update of Address List

The preferred method for updating a
unit address list is electronic updating.
If a PHA does not have this capability

in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, the PHA may go to the nearest HUD Public and Indian Housing (PIH) program office and assistance will be given to transmit the unit address information. The PIH office will assist the PHA in electronically updating and transmitting its unit address list to the REAC. If circumstances preclude a PHA from updating and submitting its unit address list electronically, HUD will consider granting approval to allow a PHA to submit the updated unit address list information manually. A PHA that seeks approval to update its unit address list manually must ensure that the REAC receives the PHA's written request for manual submission 30 calendar days before the submission due date. The written request must include the reasons why the PHA cannot update the list electronically. The REAC will respond to the PHA's request within 15 calendar days of receipt of the request.

Sampling

A statistically valid number of residents will be chosen to receive the Resident Service and Satisfaction survey. These residents will be randomly selected using a computerized program based on the total number of occupied and vacant units of the PHA. The Resident Service and Satisfaction assessment takes into account the different properties managed by a PHA by organizing the resident sampling based on the resident representation of each development in relation to the size of the entire PHA resident population. This procedure is known as selection with probability proportional to size. For example, if a PHA houses five percent of its residents in a given development, then five percent of the sample will be chosen from that development. A PHA's score, however, will represent the entire population within that agency.

Survey Distribution

The Resident Service and Satisfaction survey will be distributed to the randomly selected sample of residents of each PHA by a third party organization designated by HUD. The third party organization will also be responsible for collecting, scanning and aggregating results of the survey. The aggregate results will be transmitted to HUD for analysis and scoring. HUD will keep individual responses to the survey confidential.

Component One—Survey Results (5 Points)

The Resident Service and Satisfaction survey form, published in the **Federal Register** on November 23, 1998, with OMB approval No. 2535-0108, may be modified for nationwide implementation based on the pilot test currently underway at 32 public housing agencies. The modifications may include, but are not limited to, rewording of specific questions and possible elimination of some questions. No additional questions will be added to the existing Resident Service and Satisfaction survey. In addition, the basic content of the survey, as described in 24 CFR 902.53, will not be modified.

Once the survey form is finalized, weights will be assigned to individual questions. Answers to some questions on the survey will be used for informational purposes only and will not be calculated into the score for the PHA. For example, questions regarding overall satisfaction with the PHA will be used to confirm survey results and will not be calculated into the final survey score. The only questions that will be included in the score for the PHA will be questions that are directly related to compliance with the regulations or statutes applicable to the management of public housing. The score for the Resident Service and Satisfaction survey will be based on a total possible score of five points.

Five Survey Sections

There are five survey sections as follows:

- (1) Maintenance and repair (e.g., work order response);
- (2) Communication (e.g., perceived effectiveness);
- (3) Safety (e.g., perception of personal security);
- (4) Services (e.g., recreation and personal programs); and
- (5) Neighborhood appearance.

Scores for each survey section will be calculated in the following manner. Each section will be given a score between zero and one. For example, if the maintenance and repair survey section has 83 percent of the possible points for that section, then it would be given a score of .83. The total survey score will be the sum of the five survey section scores. Thus, there are five possible points for the survey results. This part of the score will be presented in a numeric format with one decimal place (i.e., 4.3).

Component Two—Implementation and Follow-Up Plans (5 Points)

Points awarded for component two are based on the level of

implementation of the survey and follow-up on the results of the survey, where necessary.

Survey Implementation Plan

Although as noted earlier, a third party organization will be responsible for distributing and collecting the survey results, the PHA will be responsible for disseminating information about the survey to its residents based on Survey Implementation Plan provided by HUD. The Survey Implementation Plan will explicitly outline required implementation activities. The PHA must certify to the dates the implementation activities are carried out. Activities will include, but are not limited to, displaying posters supplied by HUD; conducting meetings with residents and/or communicating with residents through a newsletter; and distributing flyers.

If the PHA certifies to having completed the above activities prior to the date set by HUD, the PHA will receive the full two points for this section. All implementation activities should take place prior to residents' receipt of the survey. HUD will set deadlines for electronic submission of Survey Implementation Plans by PHAs. All Survey Implementation Plans received past the deadline will not be considered, and the PHA will not receive any points for this component.

Survey Follow-up Plan

HUD will supply PHAs with an electronic template to develop a Survey Follow-up Plan based on the results of the survey. If a PHA scores 4.5 or higher on the resident survey, a follow-up plan will not be required and the PHA will receive the additional three points. The PHA will receive its aggregate survey results electronically prior to its PHAS Resident Service and Satisfaction certification due date. Once the PHA receives its survey results, the PHA must electronically access a template to be completed outlining any follow-up actions. The appropriate HUD Office will supply suggested actions to assist the PHA in completing its Survey Follow-up Plan. Follow-up actions will be directly related to the five survey sections listed above. The PHA will be able to develop its Survey Follow-up Plan based on areas identified by the survey which need improvement. As part of the Survey Follow-up Plan, the PHA will need to specify the following:

- Actions to be taken in the next fiscal year;
- The target date of completion;
- The funding source (if required) that will be utilized;

- The section of the survey being addressed with the action (i.e., communication, safety, etc.).

A PHA will receive the full three points for this section by completing its Survey Follow-up Plan and submitting a copy of it electronically to HUD/REAC by the due date. Survey Follow-up Plans will then be bundled and forwarded via the internet to the Public Housing Director in the appropriate HUD Field Office. Where appropriate, Field Office staff may offer technical assistance to a PHA regarding the Survey Follow-up Plan. Survey Follow-up Plans shall be retained for three years, and available for review at REAC or the PHA by HUD auditors. No points will be awarded for this component if a PHA fails to submit its Survey Follow-up Plan.

Audit

Where appropriate, the Survey Follow-up Plan will be subject to audit. If the auditor finds that the PHA is not following its plan in good faith, the PHA will not receive the three points for the Survey Follow-up Plan portion of the Resident Service and Satisfaction assessment score.

Submission of Resident Service and Satisfaction Certification

Submission to the REAC by the PHA of its Resident Service and Satisfaction

certification brings a close to the scoring process for this PHAS Indicator. Through the Resident Service and Satisfaction certification, the PHA certifies that the resident survey process has been managed as directed by HUD. PHAs are required to electronically submit their Resident Service and Satisfaction certification. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, the PHA may go to the nearest HUD PIH program office and assistance will be given to the PHA to transmit its Resident Service and Satisfaction certification.

If circumstances preclude the PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its Resident Service and Satisfaction certification manually. A PHA that seeks approval to submit the certification manually must ensure that the REAC receives the PHA's written request for manual submission 60 calendar days before the submission due date of its Resident Service and Satisfaction certification. The written request must include the reasons why the PHA cannot submit the certification electronically. The REAC will respond

to the PHA's request and will manually forward its determination in writing to the PHA.

Technical Review of the Resident Survey

The REAC will consider conducting a technical review of a PHA's resident survey results in cases where the contracted third party organization can be shown by the PHA to be in error. The burden of proof, however, rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; too few survey forms sent, which could render the sample size invalid; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

Dated: May 6, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 99-11916 Filed 5-12-99; 8:45 am]

BILLING CODE 4210-32-P



Thursday
May 13, 1999

Part X

**Department of the
Interior**

Office of Hearings and Appeals

Minerals Management Service

**30 CFR Parts 208, 241, 242, 243, 250,
and 290 and 43 CFR Part 4
Appeals of MMS Orders; Final Rule**

DEPARTMENT OF THE INTERIOR**Office of Hearings and Appeals****Minerals Management Service****30 CFR Parts 208, 241, 242, 243, 250, and 290****43 CFR Part 4****RIN 1010-AC21****Appeals of MMS Orders**

AGENCIES: Office of Hearings and Appeals (OHA) and Minerals Management Service (MMS), Interior.

ACTION: Final rulemaking.

SUMMARY: OHA and MMS are amending their rules governing the appeal of orders from MMS's Royalty Management Program and MMS's Offshore Minerals Management. This rule makes final parts of the proposed rule published on January 12, 1999. The rule also implements certain provisions of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 governing how appellants in royalty appeals may demonstrate financial solvency instead of posting a surety, and provides for new regulations to collect processing fees in appeals from Offshore Minerals Management orders.

EFFECTIVE DATES: Effective on May 13, 1999, except that the amended provisions of 30 CFR parts 208, 241, and 243 will be effective June 14, 1999.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231-3432, FAX (303) 231-3385, e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The rule provides that 30 CFR parts 250 and 290 and 43 CFR subpart J will be effective immediately upon publication. Under the Administrative Procedure Act at 5 U.S.C. 553(d), an agency must find good cause to make a substantive rule effective sooner than 30 days after the date of publication. There are certain administrative appeals pending before the Department in which, under 30 U.S.C. 1724(h)(1), the Secretary must issue a final decision before May 13, 1999, which is less than 30 days after publication of this rule. (May 13, 1999, is 33 months after the date of enactment of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, which enacted 30 U.S.C. 1724(h).) If there is no final departmental decision by that date, 30 U.S.C. 1724(h)(2) imposes a statutory rule of decision in those cases. Title 43 CFR part 4 subpart J resolves various issues involved in implementing the requirements of 30

U.S.C. 1724(h)(1) and (2). Its provisions apply to those cases in which the Secretary must issue a final decision by May 13, 1999, and the effect of the statutory rule of decision if the Department does not issue a final decision by that deadline. Title 30 CFR parts 250 and 290 contain provisions regarding appeals of orders that are part of the integrated changes to the orders and appeals scheme that includes the new 43 CFR part 4 subpart J. The Department therefore finds that good cause exists to make these provisions effective immediately upon publication. The remainder of this rule will be effective 30 days after publication.

I. Background

In May 1994, MMS began a comprehensive review of its administrative appeals process. As part of that review, MMS held several informal meetings with State, tribal, and industry representatives to discuss the problems and possible solutions regarding the appeals process. The principal problems identified included the length of the appeals process—sometimes taking several years to resolve a case—and the excessive costs of the process to both MMS and appellants.

In 1995, the Department of the Interior (DOI) established a Royalty Policy Committee (RPC) under the Minerals Management Advisory Board. At its first meeting in September 1995, the RPC established the Appeals and Alternative Dispute Resolution (ADR) Subcommittee. The Appeals and ADR Subcommittee was created to make recommendations to the RPC to improve the appeals and ADR processes. Membership in the Appeals and ADR Subcommittee included 11 representatives from industry, 5 representatives from States, and 2 representatives from Indian tribes. The Subcommittee agreed that the principal purpose of the MMS administrative appeals process should be the expeditious and independent review of appeals. The RPC made a recommendation (RPC Report) and submitted that recommendation to the Secretary of the Interior. The primary recommendation was to change the current two-step appeals process into a one-stage Interior Board of Land Appeals (IBLA) administrative appeal process. On September 22, 1997, the Secretary accepted the RPC report for consideration and proposal with some changes and clarifications.

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. 104-185, as corrected

by Pub. L. 104-200 (RSFA). RSFA amended portions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.* Before enactment of RSFA, there was no time limit on when DOI must issue decisions in appeals of orders involving royalty and other payments for Federal oil and gas leases. RSFA added a new FOGRMA section 115(h), 30 U.S.C. 1724(h), governing the time frame for DOI to process appeals of MMS orders or decisions involving royalties and other payments due on Federal oil and gas leases. For appeals involving Federal oil and gas leases covered by this new provision, DOI has 33 months from the date a proceeding is commenced to complete all levels of administrative review. If DOI does not decide the appeal within 33 months, the appeal is deemed decided either for or against DOI, depending on the type of order and the monetary amount at issue in the appeal. The 33-month deadline does not apply to appeals involving Indian leases or Federal leases for minerals other than oil and gas.

As a result of the MMS review of the appeals process and RSFA, MMS announced a proposed rule in the **Federal Register** on October 28, 1996 (61 FR 55607). The proposed regulation provided for amendments to the MMS appeals process at 30 CFR part 290. On December 31, 1997, MMS announced that it intended to withdraw the October 28, 1996, proposed rule when it published a revised notice of proposed rule (62 FR 68244). Accordingly the October 28, 1996, proposed rule was withdrawn when MMS proposed a revised appeals process on January 12, 1999 (64 FR 1930) that included most of the RPC Report recommendations.

Two portions of the proposed rule would have implemented the RPC recommendations. First, the new proposed 43 CFR part 4, subpart J, would have established a new procedure for appeals of royalty orders. That section would have replaced the current regulations at 30 CFR part 290 and 43 CFR part 4, subpart E, as they relate to appeals of royalty orders initially to the MMS Director and then to the IBLA. Second, the new proposed 30 CFR part 242, subpart B, would have established procedures for orders issued by MMS and delegated States. That subpart would have incorporated certain RSFA provisions regarding orders and orders to perform restructured accounting and for service of orders on lessees when orders are sent to their designees. In addition, subpart C of proposed part 242 would have established procedures for Indian lessors to formally request that MMS

take actions. Finally, subpart D of part 242 would have included the service requirements that currently are found at 30 CFR part 243.

We have decided not to go forward at this time with the entire appeals process that we proposed on January 12, 1999, for two major reasons. One, we received numerous negative written and oral comments regarding the proposed process. Two, the necessity to publish before May 13, 1999, a final rule implementing the RSFA appeals adjudication time requirements and the associated rule of decision under 30 U.S.C. 1724(h) for cases in which there is no final Departmental decision prevents us from conducting a thorough and reasoned review of all the comments we received on the appeals process. One commenter suggested that we withdraw the proposed rule, leave the current process in place, and only publish the portions of the proposed rule necessary to implement RSFA. Rather than withdrawing the proposed rule, we are making final only those portions of the proposed rulemaking necessary to implement RSFA, and the portions of the proposed rule which received few, if any, comments. Those portions of the rule that are part of this final rulemaking are as follows:

(1) The sections of proposed 43 CFR part 4, subpart J, necessary to implement the 33-month time period at 30 U.S.C. 1724(h), and allow joinder for lessees who receive notice of an order issued to their designee as required under 30 U.S.C. 1712(a);

(2) Proposed 30 CFR part 243, regarding stays pending appeal and bonding, and implementing 30 U.S.C. 1724(l) which allows lessees to demonstrate financial solvency in lieu of posting a bond or other surety instrument pending an administrative or judicial proceeding;

(3) Proposed 30 CFR part 290 regarding appeals of MMS Offshore Minerals Management Program (OMM) orders and related changes to 30 CFR part 250;

(4) Proposed 30 CFR part 241 regarding civil penalties authorized by FOGDRA; and

(5) Proposed changes to definitions in 30 CFR 208.2 and to 30 CFR 208.16 regarding appeals of contracting officers' decisions by purchasers of Federal royalty oil.

Because we are not finalizing the entire proposed rule, we will continue to require appellants to use the appeals procedures for royalty orders found at 30 CFR part 290 and 43 CFR part 4, subpart E, until we can publish a final rule on the appeals process. However, for royalty-related appeals to the MMS

Director, the rules are now located at 30 CFR part 290, subpart B. That subpart is revised to contain appropriate headings and provisions of the proposed rule necessary to implement RSFA. Subpart A contains the procedures in the proposed rule for OMM appeals.

II. Comments on Proposed Rule

The proposed rulemaking provided a 60-day public comment period which ended March 15, 1999. On February 16, 1999, DOI held a public hearing in Houston, Texas, to receive oral comments on the proposed rule. That public hearing was announced in the **Federal Register** (64 FR 3262, January 21, 1999). Those attending included representatives of natural gas, oil, and coal producers, including representatives both of large integrated producers and of smaller independent producers. Participants in the public hearing had the opportunity to ask specific questions about the proposed rule and to provide comments on the proposed rule.

MMS received written comments from 13 commenters during the comment period. Two additional commenters submitted late comments, which we also accepted and considered. Thus, a total of 15 comments were accepted for review. One of the comments was from the State of California, 1 was from a mining association, 3 were from oil and gas trade associations, 8 were from industry, 1 was from an Administrative Law Judge and Attorney-Advisor, from the DOI Salt Lake City Office of the Hearings Division, Office of Hearings and Appeals, and 1 was from a law firm.

We reviewed and analyzed all of the comments pertaining to the sections that are part of this final rulemaking and, in some instances, revised the language of the final rule based on these comments. The following is a discussion of the specific comments we received and our response by section number.

III. Section-by-Section Analysis, 30 CFR Part 208

Comment—We received no comments on the proposed amendments to part 208.

Response—Although we received no comments regarding this part, we made some minor changes necessary to reflect that we are not making the entire proposed rule final at this time.

IV. Section-by-Section Analysis, 30 CFR Part 241 Civil Penalties

While the focus of the comments to this proposed rulemaking concerned the provisions of 43 CFR part 4, subpart J, several comments were received with

reference to this part. Most of the comments concern sections of the rule in which no substantive change is proposed—where MMS has simply attempted to restate in plain language the rule under which MMS has operated for approximately 15 years. All comments received concerning this part were received from an association of oil and gas producers. Where we received more than one comment, the additional comments came from an individual oil and gas producer.

Section 241.50 What Definitions Apply to This Subpart?

Comments—We received two comments, which noted that the proposed rule has not defined "violation." Specifically they inquired whether, for example, when a company fails to report, is each line that should have been reported a violation or is it one violation for the entire report?

Response—MMS has operated under the current regulations for 15 years without a regulatory definition of violation. Any attempt to define the term to meet all possible circumstances would require an impractically exhaustive list. Violations could be any failure to comply with statutes, rules, lease terms or orders.

In response to the specific question asking whether each line would be a separate violation, MMS has always considered that each failure to report, or wrongly reporting a line that is required to be reported, is a violation. For example, if a company fails to report its production of natural gas, each line for which natural gas should have been reported on the production report is a violation, and each month and each lease for which it should have been reported constitutes an additional violation.

Section 241.51 What May MMS Do if I Violate a Statute, Regulation, Order, or Lease Term Relating to a Federal or Indian Oil and Gas Lease?

Comment—One commenter noted that this section does not provide for the appointment of an agent to receive service. It also believes that the Department is obligated to allow this designation under 30 U.S.C. 1719(h). In addition, the commenter also believes that the statute only allows notice by personal service or registered mail. However, it believes that although express mail and certified mail are not permitted, they should be.

Response—We agree that this section, as proposed, does not allow specifically for the appointment of an agent to receive service. However, it proposed to use the proposed provisions of 30 CFR

242.304 and 242.305, which provide for service to designated persons. For violations concerning a royalty report (Form MMS-2014), MMS will send the notice to the individual named by the lessee, designee, reporter or payor as the person to whom to direct correspondence. A similar provision was included for violations concerning production reports and audits. The proposed rule did not provide for designations of persons to be served with notices of violations committed by payors or designees of which the lessee receives notice. MMS has not traditionally sent notices of noncompliance to lessees that are not acting as reporters, designees or payors. For this reason, we did not consider this possibility when proposing these rules. We have now added provisions to section 241.51 clearly allowing the designation of an agent for the receipt of notices of noncompliance and civil penalty notices.

We also agree that we are limited in how we may serve notices under 30 U.S.C. 1719(h). While we also agree that we should be able to use other forms of service, we have clarified that service must be by registered mail or personal service, both in this section and in section 241.61.

Section 241.52 What If I Correct the Violation?

Comment—One comment was received, to the effect that this section conflicts with section 241.54, by implying that no review was possible in the case of a company that has complied with a notice of noncompliance within the statutory 20-day period to correct the violation.

Response—We believe that the language in proposed section 241.54 that allowed review “regardless of whether you correct the violations,” clearly means that a party may seek a hearing on the record even if it complied with requirements stated in a notice of noncompliance. However, we have no record of any past case in which a violator corrected a violation and then requested a hearing.

Section 241.53 What If I Do Not Correct the Violation?

Section 241.54 How May I Request a Hearing on the Record on a Notice of Noncompliance?

Section 241.55 Does My Request for a Hearing on the Record Affect the Penalties?

Comments—We received two comments concerning these sections. These commenters believed that the rule should provide for: (1) a longer than 20-

day period for the recipient of a notice to file its request for a hearing (preferably 40 days); (2) a separate opportunity for a hearing, even if no request for a hearing is made from the notice of noncompliance; (3) a mechanism for expedited review when there is a request for a stay to allow substantive review without the risk of incurring penalties; and (4) more specific regulatory criteria for determining the amount of penalties. The commenters reasoned that the purposes of 30 U.S.C. 1719, as well as all of FOGRMA, are to encourage voluntary compliance, and imply that the rule, as proposed, violates due process.

Response—Starting with how we determine the amount of penalties, we do not believe that it is necessary to provide the detailed standards for setting penalty amounts in regulatory form. MMS has written guidelines which set out, in ranges, appropriate penalties for a variety of circumstances. We do not believe it is possible to set out all the standards in advance in a permanent fashion by rule. FOGRMA requires only that “In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations.” 30 U.S.C. 1719(i). This subsection neither requires, nor implies, that the determination be made through regulation, which would limit the flexibility of DOI in setting penalty amounts appropriate to the wide variety of possible circumstances that should be considered. However, to assist potential recipients of notices of noncompliance, the following table shows the current non-binding guidelines MMS uses:

Violation	Company size		
	Minor	Mod- erate	Major
Failure to re- port	\$0-10	\$0-25	\$5-500
Failure to pay ..	0-20	2-50	10-500
Failure to pro- vide informa- tion	0-100	2-200	20-500
Failure to com- ply with order to perform restructured accounting ...	0-15	2-35	10-500

Note: Amounts in Dollars per violation per month.

We also believe that the current regulations of the Hearings Division of the Office of Hearings and Appeals at 43 CFR 4.21 have proven more than adequate when an appellant petitions

for a stay. We have used these procedures for 15 years without any complaints about an appellant’s inability to have its petition timely and fairly reviewed by the Hearings Division. We therefore will not change the procedures to mandate a faster review of requests for stays of accrual of penalties.

As to the commenter’s first two requests, FOGRMA grants the Secretary the discretion to set the time limits for an appellant to request a hearing. MMS has operated under rules requiring hearings to be requested within 20 days of the date of receipt of the notice of noncompliance for more than 15 years without complaint. In spite of this history, in the interests of increasing a violator’s ability to request hearings, we have changed the proposed rule to allow 30 days from the date of receipt of the notice of noncompliance for an appellant to request a hearing on the record. MMS has a long history of using a 30-day period in other contexts (specifically for appeals from MMS orders), which allows ample time for appellants to decide whether to seek review in those cases.

We agree with the comment that the violator may still have need for redress concerning the amount of a civil penalty even though that violator did not contest the notice of noncompliance. We therefore have added new sections 241.56 and 241.64 that allow a violator, who did not request a hearing on the record on a notice on noncompliance, 10 days from the receipt of the Notice of Civil Penalty to request a hearing on the record limited to the issue of the amount of the penalty only. By not requesting a hearing on the record on the notice of noncompliance, the recipient waived the right to contest the underlying liability for penalties.

Section 241.60 May I Be Subject to Penalties Without Prior Notice and an Opportunity to Correct?

Section 241.61 How Will MMS Inform Me of Violations Without a Period To Correct?

Section 241.62 How May I Request a Hearing on the Record on a Notice of Noncompliance Regarding Violations Without a Period To Correct?

Section 241.63 Does My Request for a Hearing on the Record Affect the Penalties?

Comments—We received one set of comments that addressed these sections concerning penalties that may begin without a period to correct. The first issue involves the definition of violation. The commenter referred to FOGRMA, which provides for an

assessment of \$25,000 per day for each day such violation continues. The commenter believes that MMS has been inconsistent by specifying a penalty calculated at \$25,000 per day for each violation. The second issue is similar to the comments on sections 241.52 through 241.54 in that no separate right of review is granted as to the amount of the penalty and that the time to seek review is too short.

We also received one comment that addressed a statement in the preamble that MMS believes that the statutory provision for assessing penalties for "failure to permit entry, inspection or audit" applies to failure to provide MMS with documents that MMS has requested under authority of FOGDMA, the regulations or the leases. The commenter noted that MMS has argued in court that audit requests are voluntary and, for that reason, that they are not appealable agency actions. The commenter continued by saying that argument is inconsistent with making lessees subject to FOGDMA penalties without opportunity to correct for not complying with audit requests.

Response—As we explained in the response to comments on section 241.50, we believe MMS has been very clear over the past decade and one-half that each failure to comply with the mandates of law is a separate violation. We believe that while FOGDMA uses the word "such" rather than "each," their meaning is identical in the context of this regulation. "Such is a demonstrative word used to indicate the quality or quantity of a thing * * *." The definition of "each" is "Every (individual of a number) regarded or treated separately." The Compact Edition of the Oxford English Dictionary 823 Vol I and 3136, Vol. II (1971). In both cases the word signifies a quantity. In the context of FOGDMA, there is a separate violation, and thus a separate penalizable act with a separately accruing penalty, for each such violation. The regulation's meaning is identical to the statute's meaning.

As to the potential problem with a person wanting to appeal only the amount of the penalty, we have added a provision at section 241.64 allowing a hearing on that issue alone, paralleling the new section 241.56.

We continue to believe there are circumstances where a refusal to provide MMS, or a delegated State, or a Tribe operating under a cooperative agreement (or under a self-determination contract or compact), with documents during an audit would amount to a failure to permit lawful audit. The exact circumstances under which MMS may use this provision will

be addressed in future proceedings when MMS believes an appropriate case has arisen.

Section 241.70 How Does MMS Decide What the Amount of the Penalty Should Be?

Comment—One comment was received that complained that the criteria articulated for determining the quantum of civil penalty are inadequate. The commenter demanded that more specific criteria be articulated to provide a reviewing officer and a court more objective criteria for determining the exercise of the agency's authority.

Response—MMS has operated under provisions similar to these for 15 years without complaint. Neither Administrative Law Judges, the Interior Board of Land Appeals, nor the Federal courts found any need for guidance in the form of a regulation. Indeed, FOGDMA only requires "In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations." 30 U.S.C. 1719(i). As mentioned in the response to sections 241.53, 241.54 and 241.55, we intend to continue to articulate our reasons as part of the administrative record rather than attempting to do so in a rule.

Section 241.74 May I Seek Judicial Review of the Decision of the Interior Board of Land Appeals?

Comment—One comment was received to the effect that the regulation should include the 30 U.S.C. 1719(j) requirement that judicial review must be taken in the United States District Court for the judicial district in which the violation allegedly took place.

Response—We do not have the ability to determine jurisdiction or venue, or other rules concerning review by Federal courts. We have therefore simplified the regulation by making it a mere pointer to the proper section of the United States Code. We have retained the sentence informing the reader of the time limit to make it easier for readers of these regulations to comply within the statutory time limit.

Section 241.75 When Must I Pay the Penalty?

Comment—One comment was received repeating the request for separate review of the amount of the penalty.

Response—As mentioned above, we have added provisions allowing for hearings on the record limited to the amount of penalty assessed. Therefore, the paragraph within this section as

proposed that prohibited such reviews has been removed.

Section 241.77 How May MMS Collect the Penalty?

Comment—One comment was received that complained that MMS has no statutory authority under FOGDMA for execution against a lease surety or to offset amounts the United States owes to the violator.

Response—FOGDMA specifically provides for offset: "The amount of any penalty under this section, as finally determined may be deducted from any sums owing by the United States to the person charged." 30 U.S.C. 1719(f). There is no specific statutory authority regarding collecting against lease sureties. They fall under the plenary regulatory authority of the Secretary under the mineral leasing laws. This regulation is sufficient authority under those provisions.

V. Section-by-Section Analysis, 30 CFR Part 242

We have decided not to finalize part 242 as proposed on January 12, 1999, at this time. However, we have reserved this part for future publication.

VI. Section-by-Section Analysis for 30 CFR Part 243 Suspensions Pending Appeal and Bonding—Royalty Management

General comments—We received two sets of comments that addressed this rule, one from an oil and gas producer and one from an association of oil and gas companies. The producer's comments were favorable to the proposed rule and referred to the association's comments for specific suggestions.

The association also welcomed the proposed rule and MMS's proposal to apply the rules even to situations where they are not mandated by RSFA, such as production from periods prior to September 1996 and to leases for minerals other than oil and gas. The commenter also responded to the question about whether the rules should apply to Indian leases as well as to Federal leases. That commenter stated that it believed that the rules should apply to all appeals, because Indian lessors as well as the Federal Government would be protected by the financial solvency provisions.

Response—We appreciate the favorable comments on the proposal. Upon considering the comment that the financial solvency provisions of the proposed rule should apply to Indian as well as Federal leases, we have decided that there are important reasons for having different sets of rules for Indian

and Federal leases. First, Indian lessors are not in a comparable position to the United States in their ability to absorb the risk of default by a person believed to be financially solvent but who later defaults on an appealed obligation. Indian lessors are much smaller, less diversified in their portfolio of risks than the United States, and are in a significantly less advantageous position than the United States. Second, the standards that we apply, and must apply, to Indian leases are different from those applied to Federal leases. We have a trust responsibility to Indian lessors and believe that requiring the protection of sureties for appeals of obligations on Indian leases is appropriate. Finally, Congress declined to extend the benefit of self-bonding by demonstration of financial solvency to lessees on Indian lands. For these reasons, we will keep the separation between Indian and Federal leases as it was in the proposed rule.

Section 243.3 What Definitions Apply to This Part?

Section 243.4 How Do I Suspend Compliance With an Order?

Comment—One commenter requested that definitions follow the RSFA definitions. In particular, “order” does not appear to include anything other than orders to pay monetary obligations. Therefore the rules seem only to permit the suspension of these orders.

Response—The purpose of the use of the word “order” in this part is to refer to the proper parts under which an appeal may be taken for which compliance may be suspended under this part. To avoid confusion we have deleted the reference to monetary obligation. We have clarified section 243.4 to provide that appeals of orders that do not require the making of a payment may be suspended without posting a surety or demonstrating financial solvency.

Section 243.5 May Another Person Post a Bond or Other Surety Instrument or Demonstrate Financial Solvency on My Behalf?

Comment—One commenter responded to our request for comments on whether any limitations are needed on who may post surety or demonstrate financial solvency on behalf of an appellant. That commenter does not believe any limitations are appropriate.

Response—We appreciate the comment, and we believe that the phrase “any other person” clearly places no limitation on who may post surety or demonstrate financial solvency

on a lessee’s behalf. Therefore, we have decided to leave the rule as proposed.

Section 243.6 When Must I or Another Person Meet the Bonding or Financial Solvency Requirements Under This Part?

Comment—One commenter believes this section should be amended to make it clear that only one bond or demonstration of financial solvency is required for any particular liability. The commenter does not believe MMS should require sureties from a lessee and its designee for the same liability. While the commenter believes, from our explanation in the preamble to the proposed rule, that only one guarantee is intended, it believes the rule itself should make clear that either the lessee or the designee, but not both, is required to post surety or demonstrate financial solvency.

Response—We have inserted the word *either* in this section to clarify that only one surety is required, regardless of the identity of the person or persons posting the surety or sureties.

Section 243.8 When Will MMS Suspend My Obligation To Comply With an Order?

Comment—One commenter applauded MMS’s proposal to increase the minimum amount under appeal for which no bond or demonstration of financial solvency is required. It urged that the same rules apply to appeals with respect to Federal and Indian lands.

Response—As explained above, we believe it is appropriate to have different standards with respect to Federal and Indian lands, and we decline to change the standards here.

Section 243.10 When Will MMS Initiate Collection Actions Against a Bond or Other Surety Instrument or a Person Demonstrating Financial Solvency?

Comment—One commenter noted that the time period for MMS to initiate collection actions against the bond or other surety is inconsistent with the Mineral Leasing Act, 30 U.S.C. 226–2, which allows 90 days for an appellant to seek judicial review of an adverse decision by the Department. The proposed rule, by contrast, allowed MMS to call on the surety within 30 days of such an adverse decision.

Response—We agree that the proposed rule should track the time period in the Mineral Leasing Act with respect to oil and gas leases for cases in which there is a decision of the IBLA or an Assistant Secretary that is subject to judicial review. We therefore have

increased the time to 90 days in the final rule for those cases.

Section 243.11 May I Appeal the MMS Bond-Approving Officer’s Determination of My Surety Amount or Financial Solvency?

Comment—One commenter noted that it did not object to the proposal that there would be no administrative review of determinations of the Bond-Approving Officer, but requested that we clarify that the determinations are judicially reviewable.

Response—Whether a court would have jurisdiction to review these determinations is a matter of statute rather than regulation. Therefore, we are not amending the rule to specifically provide for judicial review.

Section 243.12 May I Substitute a Demonstration of Financial Solvency for a Bond Posted Before the Effective Date of this Rule?

Comment—One commenter urged that this section be amended to allow an appellant to replace a surety with a self-bond at any time, not just “when the surety instrument is due for renewal.” The commenter’s reason was that an appellant may have many bonds due for renewal at different times. “Depending on the circumstances, it may be more administratively convenient * * * to replace all of its bonds with a demonstration of financial solvency at the same time.”

Response—It was not our intent to prevent an appellant from choosing between replacing its sureties individually as they expire, or replacing all sureties at once. To avoid confusion, we have amended this section to allow replacement of sureties at administratively convenient times.

Section 243.200 How Do I Demonstrate Financial Solvency?

Comment—One commenter noted that the proposed rule appears inconsistent with the preamble. The preamble noted that MMS could require updated financial statements to monitor demonstrations of financial solvency if the demonstrator files for bankruptcy. The regulatory language allows MMS to require updated financial statements upon request. The commenter urged MMS to specify the circumstances, other than bankruptcy filings, that might justify an appellant to redemonstrate financial solvency.

Response—We did not intend to narrow the rule by the preamble. The broader requirements of the rule will remain unchanged. We expect MMS to very rarely request an updated financial statement, but we believe the flexibility

is needed for circumstances that we cannot currently foresee.

VII. Section-by-Section Analysis 30 CFR Part 250

Comment—No comments were received on the proposed amendments to part 250.

VIII. Section-by-Section Analysis 30 CFR Part 290

Subpart A—Offshore Minerals Management Appeals Procedures

Section 290.2 Who May Appeal?

Comment—One commenter asked if an appeal from an order issued by an MMS Offshore Minerals Management (OMM) official would be appealable under the new 43 CFR part 4 subpart J, which is designed for appeals from orders issued by MMS Royalty Management Program (RMP) officials. Another commenter asked if we could do away with the exclusions listed in section 290.2.

Response—An order issued by an MMS OMM official is not appealable under the new 43 CFR part 4 subpart J. To clarify this matter, section 290.2 will specify that your appeal to IBLA is under 43 CFR part 4 subpart E. Adding the reference to subpart E is consistent with section 290.8(a) and should clarify the fact that appeals from orders issued by MMS OMM officials are appealed to IBLA under 43 CFR part 4 subpart E. The RSFA rule of decision provisions made final in 43 CFR part 4 subpart J do not apply to appeals of OMM orders.

Also, because we are not publishing a final rule on a new royalty appeals process at this time, we are dividing part 290 into two subparts to distinguish between appeals from orders issued from MMS's RMP and orders issued from MMS's OMM Program. Appeals of OMM orders will be under the rule at 30 CFR part 290 subpart A. Appeals of RMP orders will be under 30 CFR part 290 subpart B.

As for doing away with the exclusions listed in section 290.2, the exceptions listed for decisions concerning lease bids and deep water field determinations are based on current requirements in other sections of our rules (the sections were referenced in the proposed rule). The changes proposed to the current OMM appeals process were aimed at streamlining and simplifying the appeals process and do not affect any other MMS rules or requirements.

Section 290.5 How do I Pay My Processing Fee?

Section 290.6 How Will MMS Notify Me of Its Action on my Request?

Section 290.7 What is the Filing Date for My Appeal?

Comment—We received numerous comments criticizing the complexity of the proposed appeals rule.

Response—We believe it would be desirable to simplify this OMM appeals rule by removing the provisions in sections 290.5, 290.6 and 290.7 of the proposed rule.

We are deleting the requirement to pay the processing fee by electronic funds transfer, based upon conversations with officials in the Treasury Department. Therefore, you may pay by following the procedures in place at 30 CFR 218.51. We are also removing the parts dealing with a waiver of the \$150 processing fee imposed on each appeal. The operators on the Outer Continental Shelf (OCS) are large enough that they would not be able to justify the need for a waiver of a \$150 processing fee for their appeal. Also, because the amount of the fee is nominal, the waiver provision in the proposed rule is not needed to meet the requirements of the Small Business Regulatory Enforcement and Fairness Act or the Regulatory Flexibility Act.

The date the appeal is filed will continue to be, as in the past, the date the Notice of Appeal is received in the OMM office. The processing fee will be paid by check with the Notice of Appeal.

Subpart B—Appeals of Royalty Management Program and Delegated State Orders

Comments—We received no comments on this subpart because it was not separately proposed. The revisions made in this subpart incorporate portions of the proposed appeals rule that are necessary to implement certain provisions of RSFA, and to separate appeals of royalty-related orders from appeals of Offshore Minerals Management Program orders. The OMM-related appeals are few in number and under the new subpart A will go directly to the IBLA. We did receive comments on some of the definitions in the proposed appeals rule that are contained in this part. The revisions made in this subpart also rewrite the headings in former part 290 in "plain language," and clarify portions of former part 290.

In addition, we deleted former section 290.4 titled "Oral Argument" because they were rarely requested and rarely granted. This is also consistent with the

proposed rule which did not provide for appellants to request oral argument before the IBLA.

Section 290.100 What is the Purpose of This Subpart?

Comments—We did not receive any comments on this section.

Response—The purpose of this subpart is to provide the procedures to appeal MMS or delegated State orders concerning reporting to the MMS's RMP and the payment of royalties and other payments due under leases subject to this subpart. Subpart A of this part applies to appeals of MMS's OMM program actions.

Section 290.101 What Leases Are Subject to This Subpart?

Comments—We received no comments on this subpart.

Response—This section is the same as proposed 43 CFR 4.902. We specifically note that the scope of this subpart is not limited to those orders that are subject to RSFA time of decision requirements in 30 U.S.C. 1724(h). This subpart covers all appeals of RMP or delegated State orders, including orders concerning Federal leases for minerals other than oil and gas, all Indian leases, orders to provide information, produce documents, etc., and is not limited to Federal oil and gas leases. Included in this subpart are some provisions specific to orders that RSFA covers.

Section 290.102 What Definitions Apply to This Subpart?

Comments—This section contains definitions that are similar to those found in proposed 43 CFR 4.903, for which we received comments to which we respond in our preamble discussion of 43 CFR part 4 subpart J in this final rulemaking. Please refer to the comments and responses to definitions in that subpart in this preamble. There are some differences in definitions because 43 CFR part 4 subpart J applies only to orders that are subject to RSFA time of decision and rule of decision requirements. The coverage of this subpart, in contrast, is broader. Those differences are apparent from the text of the definitions. For definitions included in this part that are not in 43 CFR part 4 subpart J there were no comments.

Section 290.103 Who May File an Appeal?

Comments—We received no comments on this section.

Response—We retained the requirement formerly found at 30 CFR 290.2 that you may appeal an order you receive if it adversely affects you or your lessee. We also added the provision

proposed as 43 CFR 4.904(b) allowing lessees that receive a Notice of Order to either appeal the order or join in their designee's appeal under § 290.106.

Section 290.104 What May I Not Appeal Under This Subpart?

Comments—We received no comments on this section.

Response—This addition to this subpart was proposed as 43 CFR 4.905(a) and (c).

Section 290.105 How Do I Appeal an Order?

Comments—We received no comments on this section.

Response—We combined the requirements found in former 30 CFR 290.3, 290.5 and 290.6, and rewrote them in plain language. We also eliminated 30 CFR 290.3(b) which required a field report. This is consistent with the agency's and industry's desire to accelerate the appeals process.

Section 290.106 How Do Lessees Join a Designee's Appeal and What is the Effect of Joinder?

Comments—We received no comments on this section.

Response—This section was proposed as 43 CFR 4.908. We made minor changes necessary to reflect that the appeal is to the MMS Director under this part, not the Office of Hearings and Appeals.

Section 290.107 Where are the Rules Concerning the Effect of the Department Not Issuing a Decision in My Appeal Within the Statutory Time Frame?

Comments—We received no comments on this section.

Response—This section was necessary to direct appellants to the rules concerning the effect of DOI not issuing a decision in your appeal within the 33-month period prescribed under 30 U.S.C. 1724(h). Those rules are located in 43 CFR part 4 subpart J.

Section 290.108 How Do I Appeal to the IBLA?

Comments—We received no comments on this section.

Response—This section was the former 30 CFR 290.7. We added a provision that directs appellants to 43 CFR part 4 subpart E.

Section 290.109 How Do I Request an Extension of Time?

Comments—See preamble discussion of 43 CFR 4.909.

Response—See preamble discussion of 43 CFR 4.909. This section was proposed as 43 CFR 4.958. We made

minor changes necessary to reflect that the appeal is to the MMS Director under this part, not OHA, and to differentiate those appeals that involve extensions of the RSFA time of decision requirements from those that do not.

Department Hearings and Appeals Procedures

IX. Section-by-Section Analysis, 43 CFR Part 4—

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

Section 4.901 What Is the Purpose of This Subpart?

Comments—We did not receive any comments on this section.

Response—Even though we did not receive any comments on this section, we must amend the text because we are not finalizing the entire proposed rule at this time. The purpose of this subpart is revised to explain how the time limits of 30 U.S.C. 1724(h) apply to appeals subject to this subpart.

Section 4.902 What Appeals are Subject to This Subpart?

Comments—In the proposed rule, this section heading read, "What leases are subject to this subpart?" We received no comments on that section.

Response—Even though we did not receive any comments on this section, we must amend the text because we are not finalizing the entire proposed rule at this time. The section heading is changed to read, "What appeals are subject to this subpart?" We had to change the heading and content of this section to make clear what appeals this subpart applies to because the sole purpose of this subpart is to implement the time limits and rule of decision of 30 U.S.C. 1724(h). Because section 1724(h) only applies to appeals of orders involving Federal oil and gas leases, this section will state that the subpart applies only to appeals of orders or portions of orders involving the payment of royalties and other payments due, and the taking or delivery of royalty in kind, under Federal oil and gas leases. Moreover, it would make clear that its provisions apply to appeals to the MMS Director under 30 CFR part 290 before this rule became effective, appeals to the MMS Director under new 30 CFR part 290 subpart B after this rule became effective, and appeals to the IBLA under 43 CFR part 4 subpart E, both before and after the effective date of this rule. This section further specifies that this subpart does not apply to appeals of orders (or portions of orders) that

involve Indian leases or Federal leases for minerals other than oil and gas, or that relate to Federal oil and gas leases but do not involve a monetary or nonmonetary obligation.

Section 4.903 What Definitions Apply to This Subpart?

Comments—We received several comments that the definition of "lessee" in the proposed rule should quote the definition in RSFA. The commenters believed that it was inconsistent with RSFA to define lessees to include persons to whom a lease interest is assigned.

Response—In the proposed rule, we decided not to quote the exact definition of "lessee" found in RSFA because the proposed rule applied to more than oil and gas leases subject to RSFA. Moreover, we do not believe that the additional language in the proposed rule is inconsistent with RSFA. The RSFA definition states that "lessee" includes "any person to whom operating rights have been assigned." The proposed rule defines "lessee" to include "any person to whom all or part of the lessee's interest or operating rights in a lease subject to this subpart has been assigned." We do not believe that it is inconsistent with RSFA, or any law, to define a "lessee" as a person to whom all or part of the lessee's interest has been "assigned," or, in other words, to whom all or part of the lessee's interest has been sold. To the contrary, it would be inconsistent with RSFA and prevailing law and regulations to state that assignees of leases are not lessees. Therefore, we are not changing the definition of "lessee" in the proposed rule.

Comments—We received several comments on the definition of "monetary obligation" in the proposed rule. Commenters for the State of California Controller's Office felt that the proposed definition "invited dispute" over what an "issue" is, because "a particular underpayment may be attributable to overlapping regulatory violations." Thus, the California Controller's Office suggested that it would be more administratively efficient if a monetary obligation was defined as the total amount stated or estimated in the order. Another commenter stated that the plain meaning of monetary is "payable in money," and by including orders to recalculate royalties, DOI is "attempting to circumvent" the default decision provisions of 30 U.S.C. 1724(h). Finally, two commenters believe that RSFA requires us to define monetary obligation as "the principal amount due on each lease for each month" because

that is what is required under the RSFA definition of an "order to pay."

Response—With respect to the California Controller's Office's comment that "monetary obligation" should be defined as the total amount of underpayments in an order, we do not believe that the definition was confusing. We believe that because orders identify the specific regulatory violation and the associated underpayment, there should be no confusion. For example, if an order stated an underpayment amount attributable to a lessee's failure to include tax reimbursements in its gross proceeds, and stated another underpayment amount attributable to an improper deduction from the lessee's gross proceeds, we believe it is clear that although both violations involve the gross proceeds rule, they stem from *different issues* and involve separate underpayments, and thus it is reasonable to consider them to be separate obligations.

We disagree with the inference drawn by the commenter who asserted that the only interpretation of "monetary" is "payable in money." We are not attempting to circumvent the default decision provisions of section 1724(h) by including orders to recalculate and pay in the definition of monetary obligation. First, as we stated in the preamble to the proposed rule, Congress did not define "monetary." However, both Webster's Dictionary and Black's Law Dictionary define monetary as "related to" money. We believe that orders to recalculate and pay are clearly related to money, and include a requirement to pay money, and as such are "monetary" in nature. Second, the only "obligation" of a lessee under RSFA that is *nonmonetary*, and not "related to money" is a lessee's duty to deliver royalty in kind. Therefore, we are not amending this definition to state that monetary obligations do not include orders to recalculate and pay.

We also disagree with the comments that because RSFA defines an "order to pay" as a written order that "specifically identifies the obligation by lease, production month and monetary amount of such obligation" we must define monetary obligation the same way. As stated above, Congress did not define monetary obligation. Congress did, however, define "obligation." Under RSFA, an "obligation" is a specified lessee duty "which arises from or relates to any lease * * * or any mineral leasing law * * * " 30 U.S.C. 1702(25)(B). Therefore, we disagree with the commenters that an obligation must be limited to one lease. We also do not agree that an obligation must be limited

to one month. Rather, RSFA implies that an "obligation" may be issue-specific ("related to any mineral leasing law," which includes regulations). Accordingly, we are not changing the proposed definition of monetary obligation in the manner the commenter requests.

We are revising the definition of monetary obligation as proposed to clarify that monetary obligation also includes the Secretary's duty to pay, refund, offset, or credit the amount of any obligation that a lessee, designee, or payor has asserted in a request for payment, refund, offset, or credit that MMS or a delegated State has denied. This follows from the definitions of "demand" and "obligation" in the new 30 U.S.C. 1702(23)(B) and (25)(A)(ii) as added to FOGRMA by RSFA section 2, 110 Stat. 1701. Administrative appeals of denials of requests by lessees, designees, or payors for refund, offset, credit, etc., are subject to the RSFA time of decision and rule of decision requirements of 30 U.S.C. 1724(h), which covers both "demands" and "orders issued by the Secretary or a delegated State" that are "subject to administrative appeal in accordance with the regulations of the Secretary."

Comments—Several commenters objected to our decision to include subsection (2)(i) in the definition of "order" which states that orders do not include nonmandatory valuation determinations. Some commenters felt that defining a valuation determination that does not have mandatory or ordering language to not be an appealable "order" conflicts with other sections of MMS valuation regulations that allow lessees to request valuation determinations, such as 30 CFR 206.257(f). The commenters felt that under the current regulations, all valuation determinations must be mandatory. One commenter stated that the definition creates "two types of valuation determinations, those that contain mandatory or ordering language and those that do not. Only those that contain mandatory or ordering language would be appealable." We received similar comments regarding our proposal to make nonmandatory policy determinations non-appealable. One commenter stated that subpoenas that do not meet the requirements of 30 U.S.C. 1724(d)(2) should be appealable.

Response—We have provided that an order is appealable only when the document "contains mandatory or ordering language"—in other words, when the disputed legal issues and the facts involved are sufficiently definite to allow for meaningful adjudication. As we stated in the proposed rule, we do

not consider advice or guidance contained in a nonmandatory valuation determination to be an "order" because it does not compel anyone to take particular action. Likewise, general policy guidance contained in a letter to payors does not contain mandatory language requiring lessees to do anything. If the advice or guidance does not require the lessee to do anything, there is nothing to appeal.

For example, it is possible for a lessee to first receive a "Dear Payor" letter or valuation determination with general advice, next a request or subpoena for documents that would enable the Government to evaluate whether the lessee has followed that advice, and, finally, an order applying the Government's understanding of the law and facts that could be tested in an administrative appeal. Lastly, we do not believe that making nonmandatory valuation determinations non-appealable conflicts with other valuation regulations. Those regulations allow lessees to *request* a valuation determination. If MMS issues a binding determination under those rules in response to the request, then such a determination is appealable. Therefore, for the reasons explained above, we are not changing the definition of order to make nonmandatory advice and guidance appealable.

We disagree with the comment that we should define subpoenas as being appealable orders. As we stated in the preamble, subpoenas are enforceable directly by the United States Government in Federal district court under 30 U.S.C. 1717(b), and are not subject to administrative appeal. Nothing in section 1724(d)(2) changes that fact. Therefore, they also are not appealable "orders," and we are not changing the rule as the commenter suggested.

Because the purpose of this subpart is to implement the RSFA decision deadlines and rules of decision in 30 U.S.C. 1724(h)(1) and (2), and is not part of a general appeals provision as proposed, we have narrowed the definition of "order" for purposes of this subpart only. That definition makes clear that orders under this subpart are only those orders that involve either monetary obligations or nonmonetary obligations under Federal oil and gas leases and therefore subject to 30 U.S.C. 1724(h)(1) and (2) as enacted by RSFA.

We also have revised the proposed definition of order to clarify that order does not include a Notice of Noncompliance or Notice of Civil Penalty issued under the provisions of FOGRMA section 109, 30 U.S.C. 1719, and implementing regulations at 30 CFR

part 241. Nor does order include a decision of an administrative law judge following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty under FOGRMA section 109(e), 30 U.S.C. 1719(e), and associated regulations. Likewise, order does not include a decision of the IBLA on appeal from a decision of an administrative law judge following a hearing on the record. This follows from the first sentence of 30 U.S.C. 1724(h)(1), which establishes that the RSFA time of decision and rule of decision requirements cover "demands or orders issued by the Secretary or a delegated State" that are "subject to administrative appeal in accordance with the regulations of the Secretary." FOGRMA civil penalty assessments result from an entirely different process that is prescribed separately by statute.

Civil penalty assessments do not result from administratively appealable MMS or delegated State orders. Instead, FOGRMA section 109(e) prescribes that no civil penalty may be assessed until a person has been given an opportunity for a "hearing on the record"—i.e., a formal trial-type hearing before an administrative law judge, which must be conducted under Administrative Procedure Act provisions at 5 U.S.C. 554, 556, and 557. The rules at 30 CFR part 241 implement the statutory requirements of those sections regarding adjudication and agency review.

It appears plain that Congress did not intend for the RSFA time of decision and rule of decision requirements to cover FOGRMA civil penalty proceedings. RSFA itself is primarily an amendment to FOGRMA with respect to Federal leases. Had Congress intended to change the statutory civil penalty procedures, it knew how to do so and could have done so. There is no mention of any intent to include civil penalty proceedings within the 30 U.S.C. 1724(h) requirements. Moreover, the purpose of section 1724(h) was to address perceived problems with MMS's administrative appeal process that are unrelated to civil penalty proceedings.

Comment—We did not receive any comments on the definition of "party."

Response—Even though we did not receive any comments, we revised the definition of "party" to delete the reference to persons who file intervention briefs and to make other changes necessary to reflect that we are not finalizing the entire proposed rule at this time.

Comments—We did not receive any comments on the definition of "notice of an order."

Response—Even though we did not receive any comments, we revised the definition of "notice of an order" to delete the reference to 30 CFR part 242 because we are not finalizing that part of the proposed rule at this time.

Comments—We received comments stating that we should include the RSFA definition of "demand" in our final rule.

Response—We disagree. The portions of the proposed rule that we are making final do not use the term "demand." The substance of what RSFA defines as a "demand" is encompassed within orders that are subject to this subpart. Therefore, it is not necessary to define "demand" separately in this rule.

Section 4.904 When Does My Appeal Commence and End?

Comments—Several commenters suggested that an appeal should commence, for purposes of calculating the beginning of the 33-month period under section 1724(h)(1), on the date an MMS order is received by the recipient. Some commenters stated that they believe that under administrative law principles, an agency order that directs a person to take action starts the person's appellate rights. Thus, they argue that our definition of "commence" discourages an appellant from exercising those rights and compromises administrative due process in order to delay commencement of an appeal until we receive all of the items required in the proposed rule. One commenter believes that the definition for "commencement" under RSFA applies to the appeals process.

Response—Although we are not finalizing the section of the proposed rule that these comments were directed to at this time, the comments are equally applicable to this section, which was proposed as section 4.971. We recognize both that the MMS order is effective when it is received and that a recipient may have to wait more than 33 months from that date for a decision by DOI because an appeal will not commence under this rule until MMS receives the notice of appeal and statement of reasons under former 30 CFR part 290, before the new revised 30 CFR part 290 subpart B, promulgated with this rulemaking, became effective. It is the recipient of the order who "commences" an appeal, not DOI. Until DOI has received a Notice of Appeal, there is no dispute to be adjudicated, and until DOI has received a Statement of Reasons giving some reasons for the appellant's disagreement with the order, it cannot evaluate whether the appellant's disagreement has any merit. Because the recipient of the order

controls when these items are submitted, we believe it is a reasonable interpretation of section 1724(h)(1) that the 33-month period begins to run when MMS has received at least minimally sufficient documentation to begin the process of deciding the appeal. We also believe that this interpretation enhances the decision-making process.

We have remedied this problem under the new 30 CFR part 290 subpart B in section 290.109(b) and (c). Under the new subpart B, you may request an extension of time to file your statement of reasons if you agree to extend the RSFA time of decision requirement under 30 U.S.C. 1724(h)(1). (Under 30 CFR 290.105(b), there is no extension of time to file a notice of appeal.) MMS recognizes that different amounts of time may be necessary for appellants to prepare their written submissions in different cases, depending on the number and complexity of issues, the time needed to compile relevant facts and documents, etc. However, MMS believes that additional time needed in more complicated cases should not operate to the agency's prejudice. At the same time, it is in the interest of all parties to know relatively early if a lessee or designee plans to contest an order, and to provide a "bright line" for commencement of the appeal. Hence, after the effective date of the new 30 CFR part 290 subpart B and this section, your appeal commences for purposes of section 4.906 and 30 U.S.C. 1724(h) when you file your notice of appeal. If you then need further time to prepare your statement of reasons or briefs, you must agree to extend the 33-month period prescribed in 30 U.S.C. 1724(h)(1).

Before the adoption of this rule, however, MMS received numerous appeals in which various extensions of time to file statements of reasons were granted, but in which a corresponding agreement by the appellant to extend the RSFA 33-month period was not required and was not automatic. Hence, for the reasons described above, MMS believes the best reading of congressional intent is to regard the appeal as having commenced for RSFA purposes at the later of the date the notice of appeal was filed or the date the initial statement of reasons was received.

If MMS were to adopt the commenters' suggestion that an appeal "commenced" when the order was received, several weeks, or even months, of the 33-month period could be consumed without DOI being able to either decide the order was correct or grant relief if it decided otherwise. Especially in complicated cases, this

loss of time could seriously disadvantage DOI's ability to consider the merits of the appeal.

Moreover, we believe the commenter has misconstrued RSFA's definition of "commencement." As explained in the preamble to the proposed rule, RSFA did not define "commencement" for purposes of the time of decision requirement in 30 U.S.C. 1724(h)(1) applicable to "administrative proceedings." RSFA did define "commence" "with respect to a judicial proceeding" and "with respect to a demand." 30 U.S.C. 1702(20). However, the definition of "commence" under 1702(20) clearly does not encompass "administrative proceedings" under 30 U.S.C. 1724(h) or 1702(18). Rather, "commence" under section 1702(20) deals with the "commencement" of judicial proceedings or demands for purposes of the RSFA 7-year limitations period under section 4(a), 30 U.S.C. 1724(b). Accordingly, it is necessary for us in this proposed rule to define when your appeal "commenced" for purposes of section 1724(h).

We have therefore decided not to adopt the commenters' position.

Section 4.906 What If the Department Does Not Issue a Decision by the Date My Appeal Ends?

Comments—The only comments received regarding this section as proposed (section 4.956) (other than the comments regarding "commenced" and the definition of "monetary obligation" discussed above) were from the solid minerals industry. The trade association commenter and individual companies again requested that DOI make the RSFA rule of decision in this section applicable to appeals involving solid mineral leases.

Response—For the reasons set forth in the preamble to the proposed rule, we have decided not to make this section applicable to solid mineral leases. We do not believe that there is any benefit in imposing a mandatory decision where DOI has not been statutorily directed to do so.

We have, however, made changes necessary to reflect the fact that we are not publishing the proposed rule in its entirety at this time. Those changes would include provisions that refer to appeals to the MMS Director under 30 CFR part 290 before 30 CFR part 290 subpart B became effective, appeals to the MMS Director under the new 30 CFR part 290 subpart B (after this subpart became effective) and appeals to the IBLA under 43 CFR part 4 subpart E, both before and after the effective date of this subpart.

Section 4.908 What Is the Administrative Record for My Appeal If It Is Deemed Decided?

Comments—We received no comments on this section.

Response—Even though we did not receive any comments, we made changes necessary to reflect the fact that we are not finalizing the entire proposed rule at this time. Those changes would include provisions that refer to the record in appeals to the MMS Director under 30 CFR part 290 before 30 CFR part 290 subpart B became effective, appeals to the MMS Director under the new 30 CFR part 290 subpart B and the record in appeals to the IBLA under 43 CFR part 4 subpart E, both before and after the effective date of this rule.

Section 4.909 How Do I Request an Extension of Time?

Comments—We received one comment on this section (proposed section 4.958) from an industry representative and one from a trade association. The industry commenter felt that the rule should grant requests for extensions of time automatically, rather than leave it to the discretion of the official to whom the request is submitted. The trade association commenter felt that DOI should "freely" grant requests. The commenter also felt that we should make clear that parties could ask for extensions of time for any reason, including the filing of pleadings.

Response—We agree that parties should be able to request extensions of time for any reason, including for submissions of pleadings. It was not our intent in the proposed rule to restrict such requests. Therefore, to clarify that parties may request extensions for any purpose, we modified this section by eliminating the language in proposed paragraph (a) that stated parties could request an extension "to meet any filing requirement under this subpart, or for DOI to issue a final decision in your appeal." Section (a) now states:

If you are a party to an appeal subject to this subpart before the IBLA, and you need additional time after an appeal commences for any purpose, you may obtain an extension of time under this section.

With respect to the comment about automatic extensions, although we expect that we will grant these requests liberally, we are not going to bind future officials to granting automatic extensions by rule. RSFA states that the 33-month period may be extended if the Secretary and appellant agree in writing. We do not know what circumstances may exist in any particular case that would lead us to not agree to a requested extension.

IX. Procedural Matters

Regulatory Planning and Review E.O. 12866

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule does not require the payment of additional revenues. This rule sets out how the Department will review MMS's implementation of royalty and OCS operations policy.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The primary functions of appealable MMS orders are collecting royalties from the minerals industry and regulating operations of mineral leases on the OCS. Other agency functions do not cover these areas.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The administrative appeals process has no impact on or relation to grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) This rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. This rule was developed in consultation with States, tribes, and industry.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a Small Entity Compliance Guide is not required.

This rule will affect three groups of individuals or companies: (1) Indian lessors, (2) lessees and operators on offshore leases, and (3) lessees, payors, and designees on Federal and Indian leases (onshore and offshore). Indian lessors are either tribes or individuals. However, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act, and individuals do not fit the definition of small entities. As for the remaining groups, the majority of lessees, designees, payors, and operators on Federal and Indian onshore leases would be classified as small businesses

according to the definitions in the Small Business Administration Standard Industry Code (SIC). Changes in the rule that could have an economic effect on these groups are the establishment of processing fees for filing a Notice of Appeal and a Statement of Reasons (to the extent that any small businesses are operating on the OCS), posting a bond, and an increase in the maximum civil penalty to \$25,000.

Bonding or payment is mandatory for appealed amounts above \$10,000 on Federal leases and \$1,000 for Indian leases. Appealed amounts less than \$10,000 for Federal and \$1,000 for Indian leases do not require bonding which typically provides relief to small entities. The ability to demonstrate financial responsibility provides relief of credit charges from surety companies.

The rule changes the maximum civil penalty to up to \$25,000 per day for those acts for which FOGRMA allows such a penalty. A larger penalty should not have significant economic impacts because MMS assesses penalties only when business operations have reached a very poor level of conduct. Lessees and other payors may use a variety of remedies including ADR before the assessment of a penalty.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more;
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This is an administrative review process; there is no impact on these things. The rule sets a time limit on when an appealed issue must be resolved or decided, and gives relief from maintaining bonds in many instances.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. This rule does not change the relationship between MMS, IBLA, and State, local, or

tribal governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule would not take away or restrict an entity's right to appeal or bond orders received from MMS or a delegated State. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The rule does not change the role or responsibilities among Federal, State, and local governmental entities. The rule does not relate to the structure and role of States and will not have direct, substantive, or significant effects on States. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order. The rule has been reviewed and describes in clear language what is allowed and what is prohibited. The IBLA and MMS have drafted this rule in plain language and have consulted with the Department of the Interior's Office of the Solicitor, RPC Subcommittee, States, and tribes throughout the rulemaking process.

Paperwork Reduction Act

The Office of Management and Budget (OMB) approved the information collection requirements contained in this rule under 44 U.S.C. 3501 *et seq.*, and assigned OMB Control Numbers 1010-0121 and 1010-0122. The burden hours for the reporting requirements in 30 CFR part 290 are approved under OMB Control Number 1010-0121. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. You may obtain a copy of the information collections by contacting the Bureau's Information Collection Clearance Officer at (202) 208-7744.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National

Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with this clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 4.904.) (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects

30 CFR Part 208

Continental shelf, Government contracts, Mineral royalties, Petroleum, Public lands—Mineral resources, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

30 CFR Part 241

Continental shelf, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—Mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 243

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—Mineral resources, Surety bonds.

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Natural gas, Oil and gas development and production, Oil and gas exploration,

Oil and gas reserves, Penalties, Petroleum, Pipelines, Public lands—Mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 290

Administrative practice and procedure.

43 CFR Part 4

Administrative practice and procedures, Continental Shelf, Mineral royalties, Natural Gas, Petroleum, Public Lands—mineral resources.

Sylvia V. Baca,

Acting Assistant Secretary—Land and Minerals Management.

John Berry,

Assistant Secretary for Policy, Management and Budget.

Kevin Gover,

Assistant Secretary for Indian Affairs.

For the reasons set out in the preamble, MMS and OHA are amending 30 CFR Parts 208, 241, 243, 250, and 290; reserving 30 CFR part 242 and adding 43 CFR part 4, subpart J as follows:

TITLE 30—MINERAL RESOURCES

PART 208—SALE OF FEDERAL ROYALTY OIL

1. The authority citation for part 208 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 41 U.S.C. 601 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. In § 208.2, new definitions are added in alphabetical order to read as follows:

§ 208.2 Definitions.

* * * * *

Contracting officer means the Director, his or her delegate, or the person designated under a royalty oil purchase contract.

* * * * *

Contracting officer's decision means an MMS order or decision that a contracting officer issues under this part

to a purchaser of oil under a royalty oil purchase contract.

* * * * *

3. Section 208.16 is revised to read as follows:

§ 208.16 How to appeal a contracting officer's decision that you receive.

If you receive a contracting officer's decision, you may:

- (a) Appeal that decision to the Board of Contract Appeals in the Office of Hearings and Appeals, Office of the Secretary, in accordance with the procedures provided in 43 CFR part 4, subpart C; or
- (b) File an action in the United States Court of Federal Claims.

PART 241—PENALTIES

4. The authority citation for part 241 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§ 241.20 [Removed]

5. Section 241.20 is removed and subpart A is reserved.

6. Subpart B is revised to read as follows:

Subpart B—Penalties for Federal and Indian Oil and Gas Leases

Definitions

241.50 What definitions apply to this subpart?

Penalties after a Period To Correct

241.51 What may MMS do if I violate a statute, regulation, order, or lease term relating to a Federal or Indian oil and gas lease?

241.52 What if I correct the violation?

241.53 What if I do not correct the violation?

241.54 How may I request a hearing on the record on a Notice of Noncompliance?

241.55 Does my request for a hearing on the record affect the penalties?

241.56 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

Penalties Without a Period To Correct

241.60 May I be subject to penalties without prior notice and an opportunity to correct?

241.61 How will MMS inform me of violations without a period to correct?

241.62 How may I request a hearing on the record on a Notice of Noncompliance regarding violations without a period to correct?

241.63 Does my request for a hearing on the record affect the penalties?

241.64 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

General Provisions

241.70 How does MMS decide what the amount of the penalty should be?

241.71 Does the penalty affect whether I owe interest?

241.72 How will the Office of Hearings and Appeals conduct the hearing on the record?

241.73 How may I appeal the Administrative Law Judge's decision?

241.74 May I seek judicial review of the decision of the Interior Board of Land Appeals?

241.75 When must I pay the penalty?

241.76 Can MMS reduce my penalty once it is assessed?

241.77 How may MMS collect the penalty?

Criminal Penalties

241.80 May the United States criminally prosecute me for violations under Federal and Indian oil and gas leases?

Subpart B—Penalties for Federal and Indian Oil and Gas Leases

Definitions

§ 241.50 What definitions apply to this subpart?

The terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

Penalties After a Period To Correct

§ 241.51 What may MMS do if I violate a statute, regulation, order, or lease term relating to a Federal or Indian oil and gas lease?

(a) If we believe that you have not followed any requirement of a statute, regulation, order, or terms of a lease for any Federal or Indian oil or gas lease, we may send you a Notice of Noncompliance telling you what the violation is and what you need to do to correct it to avoid civil penalties under 30 U.S.C. 1719(a) and (b).

(b) We will send the Notice to your address of record as shown in the following table:

For notices of noncompliance to—	The addressee of record is—	And—
(1) A refiner or other party involved in disposition of Federal royalty taken in kind.	The position title, department name and address, or individual name and address in the executed royalty sale contract; or a different position title, department name and address, or individual name and address that the refiner or other party under the executed royalty sale contract identifies in writing for billing purposes; or an agent designated in writing to receive notices of noncompliance.	The refiner or other party must notify MMS in writing of all addressee changes.

For notices of noncompliance to—	The addressee of record is—	And—
(2) Any person required to report oil or gas removed from Federal or Indian leases to the RMP Production Accounting and Auditing System.	The most recent position title, department name and address, or individual name and address that RMP has in its records for the reporter/payor; or an agent designated in writing to receive notices of noncompliance.	The reporter/payor must notify RMP, in writing, of any addressee changes.
(3) A lessee, designee, reporter or payor whose records are subject to audit.	The position title, department name and address, or individual name and address the lessee, designee, reporter or payor identifies in writing at the initiation of the audit; or the most recent addressee that the lessee, designee, reporter or payor specified in writing; or an agent designated in writing to receive notices of noncompliance.	The lessee, designee, reporter or payor must notify MMS of any addressee changes.
(4) A reporter reporting on the "Report of Sales and Royalty Remittance" (Form MMS-2014).	The most recent position title, department name and address, or individual name and address that the lessee, designee, reporter or payor identifies in writing; or an agent designated in writing to receive notices of noncompliance.	The lessee, designee, reporter or payor is responsible for notifying RMP in writing of any addressee changes.
(5) A lessee, designee, reporter or payor who remits rental and bonuses from nonproducing Federal leases.	The most recent position title, department name and address, or individual name and address maintained in RMP records; or an agent designated in writing to receive notices of noncompliance.	The lessee, designee, reporter or payor is responsible for notifying RMP in writing of any addressee changes.

(c) We will serve Notices of Noncompliance by using registered mail or personal service.

§ 241.52 What if I correct the violation?

The matter will be closed if you correct all of the violations identified in the Notice of Noncompliance within 20 days after you receive the Notice (or within a longer time period specified in the Notice).

§ 241.53 What if I do not correct the violation?

(a) We may send you a Notice of Civil Penalty if you do not correct all of the violations identified in the Notice of Noncompliance within 20 days after you receive the Notice of Noncompliance (or within a longer time period specified in that Notice). The Notice of Civil Penalty will tell you how much penalty you must pay. The penalty may be up to \$500 per day, beginning with the date of the Notice of Noncompliance, for each violation identified in the Notice of Noncompliance for as long as you do not correct the violations.

(b) If you do not correct all of the violations identified in the Notice of Noncompliance within 40 days after you receive the Notice of Noncompliance (or 20 days following the expiration of a longer time period specified in that Notice), we may increase the penalty to up to \$5,000 per day, beginning with the date of the Notice of Noncompliance, for each violation for as long as you do not correct the violations.

§ 241.54 How may I request a hearing on the record on a Notice of Noncompliance?

You may request a hearing on the record on a Notice of Noncompliance by filing a request within 30 days of the date you received the Notice of

Noncompliance with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. You may do this regardless of whether you correct the violations identified in the Notice of Noncompliance.

§ 241.55 Does my request for a hearing on the record affect the penalties?

(a) If you do not correct the violations identified in the Notice of Noncompliance, the penalties will continue to accrue even if you request a hearing on the record.

(b) You may petition the Hearings Division (Departmental) of the Office of Hearings and Appeals, to stay the accrual of penalties pending the hearing on the record and a decision by the Administrative Law Judge under § 241.72.

(1) You must file your petition within 45 calendar days of receiving the Notice of Noncompliance.

(2) To stay the accrual of penalties, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 243, subpart B, or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 243, subpart C, for the principal amount of any unpaid amounts due that are the subject of the Notice of Noncompliance, including interest thereon, plus the amount of any penalties accrued before the date a stay becomes effective.

(3) The Hearings Division will grant or deny the petition under 43 CFR 4.21(b).

§ 241.56 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

(a) You may request a hearing on the record to challenge only the amount of a civil penalty when you receive a Notice of Civil Penalty, if you did not previously request a hearing on the record under § 241.54. If you did not request a hearing on the record on the Notice of Noncompliance under § 241.54, you may not contest your underlying liability for civil penalties.

(b) You must file your request within 10 days after you receive the Notice of Civil Penalty with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Penalties Without a Period To Correct

§ 241.60 May I be subject to penalties without prior notice and an opportunity to correct?

The Federal Oil and Gas Royalty Management Act sets out several specific violations for which penalties accrue without an opportunity to first correct the violation.

(a) Under 30 U.S.C. 1719(c), you may be subject to penalties of up to \$10,000 per day per violation for each day the violation continues if you:

(1) Knowingly or willfully fail to make any royalty payment by the date specified by statute, regulation, order or terms of the lease;

(2) Fail or refuse to permit lawful entry, inspection, or audit; or

(3) Knowingly or willfully fail or refuse to notify the Secretary, within 5 business days after any well begins production on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off

production for more than 90 days, of the date on which production has begun or resumed.

(b) Under 30 U.S.C. 1719(d), you may be subject to civil penalties of up to \$25,000 per day for each day each violation continues if you:

(1) Knowingly or willfully prepare, maintain, or submit false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;

(2) Knowingly or willfully take or remove, transport, use or divert any oil or gas from any lease site without having valid legal authority to do so; or

(3) Purchase, accept, sell, transport, or convey to another person, any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted.

§ 241.61 How will MMS inform me of violations without a period to correct?

We will inform you of violations without a period to correct by issuing a Notice of Noncompliance explaining what the violation is and how to correct it. We also will send you a Notice of Civil Penalty stating the amount of the penalty. The Notice of Noncompliance and Notice of Civil Penalty may be issued simultaneously. We will send the Notice of Noncompliance and the Notice of Civil Penalty to your address of record under § 241.51(b) using the means of service specified under § 241.51(c).

§ 241.62 How may I request a hearing on the record on a Notice of Noncompliance regarding violations without a period to correct?

You may request a hearing on the record of a Notice of Noncompliance regarding violations without a period to correct by filing a request within 30 days after you receive the Notice of Noncompliance with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. You may do this regardless of whether you correct the violations identified in the Notice of Noncompliance.

§ 241.63 Does my request for a hearing on the record affect the penalties?

(a) If you do not correct the violations identified in the Notice of Noncompliance regarding violations without a period to correct, the penalties will continue to accrue even if you request a hearing on the record.

(b) You may ask the Hearings Division (Departmental) to stay the accrual of penalties pending the hearing on the record and a decision by the

Administrative Law Judge under § 241.72.

(1) You must file your petition within 45 calendar days after you receive the Notice of Noncompliance.

(2) To stay the accrual of penalties, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 243, subpart B, or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 243, subpart C, for the principal amount of any unpaid amounts due that are the subject of the Notice of Noncompliance, including interest thereon, plus the amount of any penalties accrued before the date a stay becomes effective.

(3) The Hearings Division will grant or deny the petition under 43 CFR 4.21(b).

§ 241.64 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

(a) You may request a hearing on the record to challenge only the amount of a civil penalty when you receive a Notice of Civil Penalty regarding violations without a period to correct, if you did not previously request a hearing on the record under § 241.62. If you did not request a hearing on the record on the Notice of Noncompliance under § 241.62, you may not contest your underlying liability for civil penalties.

(b) You must file your request within 10 days after you receive Notice of Civil Penalty with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

General Provisions

§ 241.70 How does MMS decide what the amount of the penalty should be?

We determine the amount of the penalty by considering the severity of the violations, your history of compliance, and if you are a small business.

§ 241.71 Does the penalty affect whether I owe interest?

(a) The penalties under this part are in addition to interest you may owe on any underlying underpayments or unpaid debt.

(b) If you do not pay the penalty by the date required under § 241.75(d), MMS will assess you late payment interest on the penalty amount at the same rate interest is assessed under 30 CFR 218.54.

§ 241.72 How will the Office of Hearings and Appeals conduct the hearing on the record?

If you request a hearing on the record under §§ 241.54, 241.56, 241.62 or 241.64, the hearing will be conducted by a Departmental Administrative Law Judge from the Office of Hearings and Appeals. After the hearing, the Administrative Law Judge will issue a decision in accordance with the evidence presented and applicable law.

§ 241.73 How may I appeal the Administrative Law Judge's decision?

If you are adversely affected by the Administrative Law Judge's decision, you may appeal that decision to the Interior Board of Land Appeals under 43 CFR part 4, subpart E.

§ 241.74 May I seek judicial review of the decision of the Interior Board of Land Appeals?

Under 30 U.S.C. 1719(j), you may seek judicial review of the decision of the Interior Board of Land Appeals. A suit for judicial review in the District Court will be barred unless filed within 90 days after the final order.

§ 241.75 When must I pay the penalty?

(a) You must pay the amount of the Notice of Civil Penalty issued under §§ 241.53 or 241.61, if you do not request a hearing on the record under § 241.54, § 241.56, § 241.62, or § 241.64.

(b) If you request a hearing on the record under § 241.54, § 241.56, § 241.62, or § 241.64, but you do not appeal the determination of the Administrative Law Judge to the Interior Board of Land Appeals under § 241.73, you must pay the amount assessed by the Administrative Law Judge.

(c) If you appeal the determination of the Administrative Law Judge to the Interior Board of Land Appeals, you must pay the amount assessed in the IBLA decision.

(d) You must pay the penalty assessed within 40 days after:

(1) You received the Notice of Civil Penalty, if you did not request a hearing on the record under either § 241.54, § 241.56, § 241.62, or § 241.64;

(2) You received an Administrative Law Judge's decision under § 241.72, if you obtained a stay of the accrual of penalties pending the hearing on the record under § 241.55(b) or § 241.63(b) and did not appeal the Administrative Law Judge's determination to the IBLA under § 241.73;

(3) You received an IBLA decision under § 241.73 if the IBLA continued the stay of accrual of penalties pending its decision and you did not seek judicial review of the IBLA's decision; or

(4) A final non-appealable judgment of a court of competent jurisdiction is entered, if you sought judicial review of the IBLA's decision and the Department or the appropriate court suspended compliance with the IBLA's decision pending the adjudication of the case.

(e) If you do not pay, that amount is subject to collection under the provisions of § 241.77.

§ 241.76 Can MMS reduce my penalty once it is assessed?

Under 30 U.S.C. 1719(g), the Director or his or her delegate may compromise or reduce civil penalties assessed under this part.

§ 241.77 How may MMS collect the penalty?

(a) MMS may use all available means to collect the penalty including, but not limited to:

(1) Requiring the lease surety, for amounts owed by lessees, to pay the penalty;

(2) Deducting the amount of the penalty from any sums the United States owes to you; and

(3) Using judicial process to compel your payment under 30 U.S.C. 1719(k).

(b) If the Department uses judicial process, or if you seek judicial review under § 241.74 and the court upholds assessment of a penalty, the court shall have jurisdiction to award the amount assessed plus interest assessed from the date of the expiration of the 90-day period referred to in § 241.74. The amount of any penalty, as finally determined, may be deducted from any sum owing to you by the United States.

Criminal Penalties

§ 241.80 May the United States criminally prosecute me for violations under Federal and Indian oil and gas leases?

If you commit an act for which a civil penalty is provided at 30 U.S.C. 1719(d) and § 241.60(b), the United States may pursue criminal penalties as provided at 30 U.S.C. 1720, in addition to any authority for prosecution under other statutes.

8. The heading of part 242 is revised to read as follows.

PART 242—ORDERS [RESERVED]

9. Part 243 is revised to read as follows:

PART 243—SUSPENSIONS PENDING APPEAL AND BONDING—ROYALTY MANAGEMENT PROGRAM

Subpart A—General Provisions

Sec.

243.1 What is the purpose of this part?

243.2 What leases are subject to this part?

243.3 What definitions apply to this part?

243.4 How do I suspend compliance with an order?

243.5 May another person post a bond or other surety instrument or demonstrate financial solvency on my behalf?

243.6 When must I or another person meet the bonding or financial solvency requirements under this part?

243.7 What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?

243.8 When will MMS suspend my obligation to comply with an order?

243.9 Will MMS continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?

243.10 When will MMS collect against a bond or other surety instrument or a person demonstrating financial solvency?

243.11 May I appeal the MMS bond-approving officer's determination of my surety amount or financial solvency?

243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?

Subpart B—Bonding Requirements

243.100 What standards must my MMS-specified surety instrument meet?

243.101 How will MMS determine the amount of my bond or other surety instrument?

Subpart C—Financial Solvency Requirements

243.200 How do I demonstrate financial solvency?

243.201 How will MMS determine if I am financially solvent?

243.202 When will MMS monitor my financial solvency?

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart A—General Provisions

§ 243.1 What is the purpose of this part?

This part applies to you if you are a lessee or recipient of an order. This part explains:

(a) How you may suspend compliance with an order that you (or your designee if you are a lessee) have appealed under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, or under 30 CFR part 290, subpart B; and

(b) When you or another person acting on your behalf must submit a bond or other surety or demonstrate financial solvency.

§ 243.2 What leases are subject to this part?

This part applies to all Federal mineral leases onshore and on the Outer Continental Shelf (OCS), and to all

federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands.

§ 243.3 What definitions apply to this part?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Designee means the person designated by a lessee under § 218.52 of this chapter to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease, or any person to whom all or part of the lessee's interest or operating rights in a lease has been assigned.

MMS bond-approving officer means the Associate Director for Royalty Management or an official to whom the Associate Director delegates that responsibility.

MMS-specified surety instrument means an MMS-specified administrative appeal bond, an MMS-specified irrevocable letter of credit, a Treasury book-entry bond or note, or a financial institution book-entry certificate of deposit.

Notice of order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Order means an order appealable under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, under 30 CFR part 290 subpart B, or under 30 CFR part 208.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture.

§ 243.4 How do I suspend compliance with an order?

(a) If you timely appeal an order, and if that order or portion of that order:

(1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency under this part, except as provided in paragraph (b) of this section; or

(2) Does not require you to make a payment, compliance with that order is

suspended when you meet all requirements to file that appeal.

(b) You need not meet the requirements of paragraph (a) of this section if:

- (1) The order is an assessment; or
- (2) Another person agrees to fulfill these requirements on your behalf under § 243.5.

§ 243.5 May another person post a bond or other surety instrument or demonstrate financial solvency on my behalf?

Any other person, including a designee, payor, or affiliate, may post a bond or other surety instrument or demonstrate financial solvency under this part on behalf of an appellant required to post a bond or other surety instrument under § 243.4(a)(1).

§ 243.6 When must I or another person meet the bonding or financial solvency requirements under this part?

If you must meet the bonding or financial solvency requirements under § 243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.

§ 243.7 What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?

If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency under § 243.5, you:

- (a) Must notify MMS in writing at the address specified in § 243.200(a) that you are assuming the appellant's responsibility under this part;
- (b) May not assert that you are not otherwise liable for royalties or other payments under 30 U.S.C. 1712(a), or any other theory, as a defense if MMS calls your bond or requires you to pay based on your demonstration of financial solvency; and
- (c) May end your voluntarily-assumed responsibility for posting a bond or other surety instrument only after the appellant under this part either:
 - (1) Pays or posts a bond or other surety instrument; or
 - (2) Demonstrates financial solvency.

§ 243.8 When will MMS suspend my obligation to comply with an order?

(a) *Federal leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Federal mineral leases onshore or on the Outer Continental Shelf (OCS), and:

(1) If the amount under appeal is less than \$10,000 or does not require payment of a specified amount, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Land Management for onshore leases, and MMS for OCS leases, as collateral for the obligation; or

(2) If the amount under appeal is \$10,000 or more, MMS will suspend your obligation to comply with that order if you:

(i) Submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes; or

(ii) Demonstrate financial solvency under subpart C.

(b) *Indian leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Indian mineral leases subject to this part, and:

(1) If the amount under appeal is less than \$1,000 or does not require payment, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Indian Affairs as collateral for the obligation; or

(2) If the amount under appeal is \$1,000 or more, MMS will suspend your obligation to comply with that order if you submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes.

(c) Nothing in this part prohibits you from paying any demanded amount or complying with any other requirement pending appeal. However, voluntarily paying any demanded amount or otherwise complying with any other requirement when suspension of an order is otherwise available under these rules does not create judicially reviewable final agency action under 5 U.S.C. 704.

(d) Regardless of the amount under appeal, MMS may inform you that it will not suspend your obligation to comply with the order under paragraph (a) or (b) of this section because suspension would harm the interests of the United States or the Indian lessor.

§ 243.9 Will MMS continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?

(a) If you seek judicial review of an IBLA decision or other final action of the Department of the Interior regarding an order, MMS will suspend your obligation to comply with that order pending judicial review if you continue to meet the requirements of this part.

(b) Notwithstanding the provisions of paragraph (a) of this section, MMS may decide that it will not suspend your

obligation to comply with an order. MMS will notify you in writing of that decision and the reasons for it.

§ 243.10 When will MMS collect against a bond or other surety instrument or a person demonstrating financial solvency?

(a) This section applies to you if, for an appeal of an order under this part, you:

(1) Maintain a bond or an MMS-specified surety instrument on your own behalf or for another person; or

(2) Have demonstrated financial solvency on your own behalf or for another person.

(b) MMS may initiate collection against the bond or other surety instrument or the person demonstrating financial solvency:

(1) If the MMS Director or the Deputy Commissioner of Indian Affairs decides your appeal adversely to you and you do not pay the amount due or appeal that decision to the IBLA under 43 CFR part 4, subpart E;

(2) If the IBLA, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides your appeal adversely to you, and you do not pay the amount due or pursue judicial review within 90 days of the decision;

(3) If a court of competent jurisdiction issues a final non-appealable decision adverse to you, and you do not pay the amount due within 30 days of the decision;

(4) If you do not increase the amount of your bond or other surety instrument as required under § 243.101(b), or otherwise fail to maintain an adequate surety instrument in effect, and you do not pay the amount due under the order within 30 days of notice from MMS under § 243.101(b);

(5) If the obligation to comply with an order or decision is not suspended under § 243.8 or § 243.9 and you do not pay the amount required under the order or decision; or

(6) If the MMS bond-approving officer determines that you are no longer financially solvent under § 243.202(c), and you do not pay the order amount or post a bond or other MMS-specified surety instrument under subpart B within 30 days of that determination.

§ 243.11 May I appeal the MMS bond-approving officer's determination of my surety amount or financial solvency?

Any decision on your surety amount under subpart B or your financial solvency under subpart C is final and is not subject to appeal.

§ 243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?

If you appealed an order before June 14, 1999 and you submitted an MMS-specified surety instrument to suspend compliance with that order, you may replace the surety with a demonstration of financial solvency under this part at an administratively convenient time, such as when the surety instrument is due for renewal.

Subpart B—Bonding Requirements

§ 243.100 What standards must my MMS-specified surety instrument meet?

(a) An MMS-specified surety instrument must be in a form specified in MMS instructions. MMS will give you written information and standard forms for MMS-specified surety instrument requirements.

(b) MMS will use a bank-rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument adequate to indemnify the lessor from loss or damage.

(1) Administrative appeal bonds must be issued by a qualified surety company which the Department of the Treasury has approved.

(2) Irrevocable letters of credit or certificates of deposit must be from a financial institution acceptable to MMS with a minimum 1-year period of coverage subject to automatic renewal up to 5 years.

§ 243.101 How will MMS determine the amount of my bond or other surety instrument?

(a) The MMS bond-approving officer may approve your surety if he or she determines that the amount is adequate to guarantee payment. The amount of your surety may vary depending on the form of the surety and how long the surety is effective.

(1) The amount of the MMS-specified surety instrument must include the principal amount owed under the order plus any accrued interest we determine is owed plus projected interest for a 1-year period.

(2) Treasury book-entry bond or note amounts must be equal to at least 120 percent of the required surety amount.

(b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually on the date your appeal was filed. We will determine the additional estimated interest and notify you of the amount so you can amend your surety instrument.

(c) You may submit a single surety instrument that covers multiple appeals. You may change the instrument to add new amounts under appeal or remove amounts that have been adjudicated in your favor or that you have paid if you:

- (1) Amend the single surety instrument annually on the date you filed your first appeal; and
- (2) Submit a separate surety instrument for new amounts under appeal until you amend the instrument to cover the new appeals.

Subpart C—Financial Solvency Requirements

§ 243.200 How do I demonstrate financial solvency?

(a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the MMS bond-approving officer, up to 3 years of tax returns to the MMS, Debt Collection Section using:

- (1) The U.S. Postal Service or private delivery at P.O. Box 5760, MS 3031, Denver, CO 80217-5760; or
- (2) Courier or overnight delivery at MS 3031, Denver Federal Center, Bldg. 85, Room A-212, Denver, CO 80225-0165.

(b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date MMS first determined that you demonstrated financial solvency as long as you have active appeals, or whenever MMS requests.

(c) If you demonstrate financial solvency in the current calendar year, you are not required to redemonstrate financial solvency for new appeals of orders during that calendar year unless you file for protection under any provision of the U.S. Bankruptcy Code (Title 11 of the United States Code), or MMS notifies you that you must redemonstrate financial solvency.

§ 243.201 How will MMS determine if I am financially solvent?

(a) The MMS bond-approving officer will determine your financial solvency by examining your total net worth, including, as appropriate, the net worth of your affiliated entities.

(b) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is greater than \$300 million, you are presumptively deemed financially solvent, and we will not require you to post a bond or other surety instrument.

(c) If your net worth, minus the amount we would require as surety

under subpart B for all orders you have appealed is less than \$300 million, you must submit the following to the MMS Debt Collection Section by one of the methods in § 243.200(a):

- (1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and
- (2) A nonrefundable \$50 processing fee:

(i) You must pay the processing fee to us following the requirements for making payments found in 30 CFR 218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments;

(ii) You must submit the fee with your request under paragraph (c)(1) of this section, and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency under paragraph (a) of this section and you have active appeals.

(d) If you request that we consult a business-information or credit-reporting service or program under paragraph (c) of this section:

(1) We will use criteria similar to that which a potential creditor would use to lend an amount equal to the bond or other surety instrument we would require under subpart B;

(2) For us to consider you financially solvent, the business-information or credit-reporting service or program must demonstrate your degree of risk as low to moderate:

(i) If our bond-approving officer determines that the business-information or credit-reporting service or program information demonstrates your financial solvency to our satisfaction, our bond-approving officer will not require you to post a bond or other surety instrument under subpart B;

(ii) If our bond-approving officer determines that the business-information or credit-reporting service or program information does not demonstrate your financial solvency to our satisfaction, our bond-approving officer will require you to post a bond or other surety instrument under subpart B or pay the obligation.

§ 243.202 When will MMS monitor my financial solvency?

(a) If you are presumptively financially solvent under § 243.201(b), MMS will determine your net worth as described under §§ 243.201(b) and (c) to evaluate your financial solvency at least annually on the date we first determined that you demonstrated financial solvency as long as you have

active appeals and each time you appeal a new order.

(b) If you ask us to consult a business-information or credit-reporting service or program under § 243.201(c), we will consult a service or program annually as long as you have active appeals and each time you appeal a new order.

(c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other MMS-specified surety instrument under subpart B.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

10. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

10a. Section 250.1409 is revised to read as follows:

§ 250.1409 What are my appeal rights?

(a) When you receive the Reviewing Officer's final decision, you have 60 days to either pay the penalty or file an appeal in accordance with 30 CFR part 290, subpart A.

(b) If you file an appeal, you must either:

(1) Submit a surety bond in the amount of the penalty to the Regional Adjudication Office in the Region where the penalty was assessed, following instructions that the Reviewing Officer will include in the final decision; or

(2) Notify the Regional Adjudication Office, in the Region where the penalty was assessed, that you want your lease-specific/area-wide bond on file to be used as the bond for the penalty amount.

(c) If you choose the alternative in paragraph (b)(2) of this section, the Regional Director may require additional security (*i.e.*, security in excess of your existing bond) to ensure sufficient coverage during an appeal. In that event, the Regional Director will require you to post the supplemental bond with the regional office in the same manner as under §§ 256.53(d) through (f) of this chapter. If the Regional Director determines the appeal should be covered by a lease-specific abandonment account then you must establish an account that meets the requirements of § 256.56.

(d) If you do not either pay the penalty or file a timely appeal, MMS will take one or more of the following actions:

(1) We will collect the amount you were assessed, plus interest, late payment charges, and other fees as provided by law, from the date you received the Reviewing Officer's final

decision until the date we receive payment;

(2) We may initiate additional enforcement, including, if appropriate, cancellation of the lease, right-of-way, license, permit, or approval, or the forfeiture of a bond under this part; or

(3) We may bar you from doing further business with the Federal Government according to Executive Orders 12549 and 12689, and section 2455 of the Federal Acquisition Streamlining Act of 1994, 31 U.S.C. 6101. The Department of the Interior's regulations implementing these authorities are found at 43 CFR part 62, subpart D.

11. Part 290 of subchapter C is revised to read as follows:

PART 290—APPEAL PROCEDURES

Subpart A—Offshore Minerals Management Appeal Procedures

Sec.

290.1 What is the purpose of this subpart?

290.2 Who may appeal?

290.3 What is the time limit for filing an appeal?

290.4 How do I file an appeal?

290.5 Can I obtain an extension for filing my Notice of Appeal?

290.6 Are informal resolutions permitted?

290.7 Do I have to comply with the decision or order while my appeal is pending?

290.8 How do I exhaust my administrative remedies?

Subpart B—Appeals of Royalty Management Program and Delegated State Orders

290.100 What is the purpose of this subpart?

290.101 What leases are subject to this subpart?

290.102 What definitions apply to this subpart?

290.103 Who may file an appeal?

290.104 What may I not appeal under this subpart?

290.105 How do I appeal an order?

290.106 How do lessees join a designee's appeal and how does joinder affect the appeal?

290.107 Where are the rules concerning the effect of the Department not issuing a decision in my appeal within the statutory time frame?

290.108 How do I appeal to the IBLA?

290.109 How do I request an extension of time?

Authority: 5 U.S.C. 301 *et seq.*; 43 U.S.C. 1331 *et seq.*

Subpart A—Offshore Minerals Management Appeal Procedures

§ 290.1 What is the purpose of this subpart?

The purpose of this subpart is to explain the procedures for appeals of Minerals Management Service (MMS) Offshore Minerals Management (OMM)

decisions and orders issued under subchapter B.

§ 290.2 Who may appeal?

If you are adversely affected by an OMM official's final decision or order issued under 30 CFR chapter II, subchapter B, you may appeal that decision or order to the Interior Board of Land Appeals (IBLA). Your appeal must conform with the procedures found in this subpart and 43 CFR part 4, subpart E. A request for reconsideration of an MMS decision concerning a lease bid, authorized in 30 CFR 256.47(e)(3) and 281.21(a)(1), or a deep water field determination, authorized in 30 CFR 203.79(a) and 30 CFR 260.110(d)(2), is not subject to the procedures found in this part.

§ 290.3 What is the time limit for filing an appeal?

You must file your appeal within 60 days after you receive OMM's final decision or order. The 60-day time period applies rather than the time period provided in 43 CFR 4.411(a). A decision or order is received on the date you sign a receipt confirming delivery or, if there is no receipt, the date otherwise documented.

§ 290.4 How do I file an appeal?

For your appeal to be filed, MMS must receive all of the following within 60 days after you receive the decision or order:

(a) A written Notice of Appeal together with a copy of the decision or order you are appealing in the office of the OMM officer that issued the decision or order. You cannot extend the 60-day period for that office to receive your Notice of Appeal; and

(b) A nonrefundable processing fee of \$150 paid with the Notice of Appeal.

(1) Identify the order you are appealing on the check or other form of payment you use to pay the processing fee.

(2) You cannot extend the 60-day period for payment of the processing fee.

(3) You must pay the processing fee to MMS following the requirements for making payments found in 30 CFR 218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments.

§ 290.5 Can I obtain an extension for filing my Notice of Appeal?

You cannot obtain an extension of time to file the Notice of Appeal. See 43 CFR 4.411(c).

§ 290.6 Are informal resolutions permitted?

(a) You may seek informal resolution with the issuing officer's next level supervisor during the 60-day period established in § 290.3.

(b) Nothing in this subpart precludes resolution by settlement of any appeal or matter pending in the administrative process after the 60-day period established in § 290.3.

§ 290.7 Do I have to comply with the decision or order while my appeal is pending?

(a) The decision or order is effective during the 60-day period for filing an appeal under § 290.3 unless:

(1) OMM notifies you that the decision or order, or some portion of it, is suspended during this period because there is no likelihood of immediate and irreparable harm to human life, the environment, any mineral deposit, or property; or

(2) You post a surety bond under 30 CFR 250.1409 pending the appeal challenging an order to pay a civil penalty.

(b) This section applies rather than 43 CFR 4.21(a) for appeals of OMM orders.

(c) After you file your appeal, IBLA may grant a stay of a decision or order under 43 CFR 4.21(b); however, a decision or order remains in effect until IBLA grants your request for a stay of the decision or order under appeal.

§ 290.8 How do I exhaust my administrative remedies?

(a) If you receive a decision or order issued under chapter II, subchapter B, you must appeal that decision or order to IBLA under 43 CFR part 4, subpart E to exhaust administrative remedies.

(b) This section does not apply if the Assistant Secretary for Land and Minerals Management or the IBLA makes a decision or order immediately effective notwithstanding an appeal.

Subpart B—Appeals of Royalty Management Program and Delegated States Orders**§ 290.100 What is the purpose of this subpart?**

This subpart tells you how to appeal Minerals Management Service (MMS) or delegated State orders concerning reporting to the MMS Royalty Management Program (RMP) and the payment of royalties and other payments due under leases subject to this subpart.

§ 290.101 What leases are subject to this subpart?

This subpart applies to:

(a) All Federal mineral leases onshore and on the Outer Continental Shelf (OCS); and

(b) All federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands, regardless of the statutory authority under which the lease was issued or maintained.

§ 290.102 What definitions apply to this subpart?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Delegated State means a State to which MMS has delegated authority to perform royalty management functions under an agreement or agreements under regulations at 30 CFR part 227.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

IBLA means the Interior Board of Land Appeals.

Indian lessor means an Indian tribe or individual Indian mineral owner with a beneficial or restricted interest in a property that is subject to a lease issued or administered by the Secretary on behalf of the tribe or individual Indian mineral owner.

Lease means any agreement authorizing exploration for or extraction of any mineral, regardless of whether the instrument is expressly denominated as a "lease," including any:

(1) Contract;

(2) Net profit share arrangement;

(3) Joint venture; or

(4) Agreement the Secretary approves under the Indian Mineral Development Act, 25 U.S.C. 2101 *et seq.*

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease subject to this subpart, or any person to whom all or part of the lessee's interest or operating rights in a lease subject to this subpart has been assigned.

Notice of Order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Obligation means:

(1) A lessee's, designee's or payor's duty to:

(i) Deliver oil or gas royalty in kind; or

(ii) Make a lease-related payment, including royalty, minimum royalty,

rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and

(2) The Secretary's duty to:

(i) Take oil or gas royalty-in-kind; or

(ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.

(3) The obligations identified in paragraphs (1)(i) and (2)(i) of this definition are nonmonetary obligations. The obligations identified in paragraphs (1)(ii) and (2)(ii), including the requirement to compute the amount of such obligations, are monetary obligations.

Order for purposes of this subpart only, means any document issued by the MMS Director, MMS RMP, or a delegated State that contains mandatory or ordering language that requires the recipient to do any of the following for any lease subject to this subpart: report, compute, or pay royalties or other obligations, report production, or provide other information.

(1) Order includes:

(i) An order to pay or to compute and pay; and

(ii) An MMS or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee or payor.

(2) Order does not include:

(i) A non-binding request, information, or guidance, such as:

(A) Advice or guidance on how to report or pay, including a valuation determination, unless it contains mandatory or ordering language; and
(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that MMS issues to a refiner or other person involved in disposition of royalty taken in kind; or
(iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty.

Party means MMS, any person who files a Notice of Appeal, and any person who files a Notice of Joinder in an appeal under this subpart.

§ 290.103 Who may file an appeal?

(a) If you receive an order that adversely affects you or your lessee, you may appeal that order except as provided under § 290.104.

(b) If you are a lessee and you receive a Notice of Order, and if you contest the order, you may either appeal the order

or join in your designee's appeal under § 290.106.

§ 290.104 What may I not appeal under this subpart?

You may not appeal:

- (a) An action that is not an order, as defined in this subpart; or
- (b) A determination of the surety amount or financial solvency under 30 CFR part 243, subparts B or C.

§ 290.105 How do I appeal an order?

(a) You may appeal an order to the Director, Minerals Management Service (MMS Director), by filing a Notice of Appeal in the office of the official issuing the order within 30 days from service of the order.

(1) Within the same 30-day period, you must file in the office of the official issuing the order a statement of reasons or written arguments or briefs that include the arguments on the facts or laws that you believe justify reversal or modification of the order.

(2) If you are a designee, when you file your Notice of Appeal you must serve your Notice of Appeal on the lessees for the leases in the order you appealed.

(b) You may not request and will not receive an extension of time for filing the Notice of Appeal.

(c) If the office of the official issuing the order does not receive the Notice of Appeal within the time provided in paragraph (a) of this section, the Notice of Appeal will be considered timely if the office of the official issuing the order receives:

(1) The Notice of Appeal not later than 10 days after the required filing date; and

(2) The officer with whom the Notice of Appeal must be filed determines that the Notice of Appeal was transmitted to the proper office before the filing deadline in paragraph (a) of this section.

(d) If the Notice of Appeal is filed after the grace period provided in paragraph (c) of this section and was not transmitted to the proper office before the filing deadline in paragraph (a) of this section, the MMS Director will not consider the Notice of Appeal and the case will be closed.

(e) The officer with whom the Notice of Appeal is filed will send the appeal and accompanying papers to the MMS Director.

(f) The MMS Director will review the record and render a decision in the case.

(g) If an order involves Indian leases, the Deputy Commissioner of Indian Affairs will exercise the functions vested in the MMS Director.

§ 290.106 How do lessees join a designee's appeal and how does joinder affect the appeal?

(a) If you are a lessee, and your designee files an appeal under § 290.103, you may join in that appeal within 30 days after you receive your designee's Notice of Appeal under § 290.105(a)(2) by filing a Notice of Joinder with the office or official that issued the order.

(b) If you join in an appeal under paragraph (a) of this section, you are deemed to appeal the order jointly with the designee, but the designee must fulfill all requirements imposed on appellants under this subpart and 43 CFR part 4, subparts E and J. You may not file submissions or pleadings separately from the designee.

(c) If you are a lessee and you neither appeal nor join in your designee's appeal under this section, your designee's actions with respect to the appeal and any decisions in the appeal bind you.

(d) If you are a designee and you decide to discontinue participation in the appeal, you must serve written notice within 30 days before the next submission or pleading is due on:

(1) All lessees who have joined in the appeal under paragraph (a) of this section;

(2) The office or officer with whom any subsequent submissions or pleadings must be filed, including the IBLA; and

(3) All other parties to the appeal.

(e) If you have joined in the appeal under paragraph (a) of this section, and if the designee notifies you under paragraph (d) of this section that it declines to further pursue the appeal, you become an appellant and must then meet all requirements of this subpart and 43 CFR part 4, subparts E and J, as the appellant.

§ 290.107 Where are the rules concerning the effect of the Department not issuing a decision in my appeal within the statutory time frame?

If your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, the rules concerning the effect of the Department not issuing a final decision in your appeal within the 33-month period prescribed under 30 U.S.C. 1724(h) are located in 43 CFR part 4, subpart J.

§ 290.108 How do I appeal to the IBLA?

Any party to a case adversely affected by a final decision of the MMS Director or the Deputy Commissioner of Indian Affairs under this subpart shall have a right of appeal to the IBLA under the procedures provided in 43 CFR part 4, subpart E.

§ 290.109 How do I request an extension of time?

(a) If you are a party to an appeal under this subpart, and you need additional time after the appeal commences under 43 CFR 4.904 for any purpose:

(1) You may obtain an extension of time under this section; and

(2) You must submit a written request for an extension of time to:

(i) The office or official with whom you must file a document before the required filing date; or

(ii) If you are not seeking an extension of time to file a document, to the office or official before whom the appeal is pending.

(b) If you are an appellant, and if your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, you must agree in writing in your request to extend the period in which the Department must issue a final decision in your appeal under 30 U.S.C. 1724(h) and 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(c) If you are any other party to an appeal involving monetary or nonmonetary obligations under Federal oil and gas leases, the office or official with whom you must file the request may require you to submit a written agreement signed by the appellant to extend the period in which the Department must issue a final decision in the appeal under 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(d) The office or official with whom you must file your request may decline any request for an extension of time.

(e) You must serve your request on all parties to the appeal.

43 CFR PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

13. The authority citation for part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

14. In 43 CFR part 4, subpart J is added to read as follows.

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

4.901 What is the purpose of this subpart?

4.902 What appeals are subject to this subpart?

4.903 What definitions apply to this subpart?

4.904 When does my appeal commence and end?

4.905 What if a due date falls on a day the Department or relevant office is not open for business?

- 4.906 What if the Department does not issue a decision by the date my appeal ends?
- 4.907 What if an IBLA decision requires MMS or a delegated State to recalculate royalties or other payments?
- 4.908 What is the administrative record for my appeal if it is deemed decided?
- 4.909 How do I request an extension of time?

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

§ 4.901 What is the purpose of this subpart?

This subpart tells you how the time limits of 30 U.S.C. 1724(h) apply to appeals subject to this subpart.

§ 4.902 What appeals are subject to this subpart?

(a) This subpart applies to appeals under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, 30 CFR part 290 subpart B, and 43 CFR part 4, subpart E, of Minerals Management Service (MMS) or delegated State orders or portions of orders concerning payment (or computation and payment) of royalties and other payments due, and delivery or taking of royalty in kind, under Federal oil and gas leases.

(b) This subpart does not apply to appeals of orders, or portions of orders, that

- (1) Involve Indian leases or Federal leases for minerals other than oil and gas; or
- (2) Relate to Federal oil and gas leases but do not involve a monetary or nonmonetary obligation.

§ 4.903 What definitions apply to this subpart?

For the purposes of this subpart only:

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

- (1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;
- (2) Any interest; or
- (3) Any civil or criminal penalty.

Delegated State means a State to which MMS has delegated authority to perform royalty management functions under an agreement or agreements under 30 CFR part 227.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other

payments due on a lease on the lessee's behalf.

IBLA means the Interior Board of Land Appeals.

Lease means any agreement authorizing exploration for or extraction of any mineral, regardless of whether the instrument is expressly denominated as a "lease," including any:

- (1) Contract;
- (2) Net profit share arrangement; or
- (3) Joint venture.

Lessee means any person to whom the United States issues a Federal oil and gas lease, or any person to whom all or part of the lessee's interest or operating rights in a Federal oil and gas lease has been assigned.

Monetary obligation means a lessee's, designee's or payor's duty to pay, or to compute and pay, any obligation in any order, or the Secretary's duty to pay, refund, offset, or credit the amount of any obligation that is the subject of a decision by the MMS or a delegated State denying a lessee's, designee's, or payor's written request for the payment, refund, offset, or credit. To determine the amount of any monetary obligation, for purposes of the default rule of decision in § 4.906 and 30 U.S.C. 1724(h):

(1) If an order asserts a monetary obligation arising from one issue or type of underpayment that covers multiple leases or production months, the total obligation for all leases or production months involved constitutes a single monetary obligation;

(2) If an order asserts monetary obligations arising from different issues or types of underpayments for one or more leases, the obligations arising from each separate issue, subject to paragraph (1) of this definition, constitute separate monetary obligations; and

(3) If an order asserts a monetary obligation with a stated amount of additional royalties due, plus an order to perform a restructured accounting arising from the same issue or cause as the specifically stated underpayment, the stated amount of royalties due plus the estimated amount due under the restructured accounting, subject to paragraphs (1) and (2) of this definition, together constitutes a single monetary obligation.

Nonmonetary obligation means any duty of a lessee or its designee to deliver oil or gas in kind, or any duty of the Secretary to take oil or gas royalty in kind.

Notice of Order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Obligation means:

(1) A lessee's, designee's or payor's duty to:

- (i) Deliver oil or gas royalty in kind; or
- (ii) Make a lease-related payment, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and

(2) The Secretary's duty to:

- (i) Take oil or gas royalty in kind; or
- (ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.

Order means any document or portion of a document issued by the MMS Director, MMS RMP, or a delegated State, that contains mandatory or ordering language regarding any monetary or nonmonetary obligation under any Federal oil and gas lease or leases.

(1) Order includes but is not limited to the following:

- (i) An order to pay;
- (ii) A MMS or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee or payor.

(2) Order does not include:

- (i) A non-binding request, information, or guidance, such as:

- (A) Advice or guidance on how to report or pay, including valuation determination, unless it contains mandatory or ordering language; and
- (B) A policy determination;

(ii) A subpoena;

- (iii) An order to pay that MMS issues to a refiner or other person involved in disposition of royalty taken in kind; or
- (iv) a Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty.

Party means MMS, any person who files a Notice of Appeal under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, 30 CFR part 290 subpart B, or 43 CFR part 4, subpart E, and any person who files a Notice of Joinder in an appeal under 30 CFR part 290, subpart B.

Payor means any person responsible for reporting and paying royalties for Federal oil and gas leases for production before September 1, 1996.

§ 4.904 When does my appeal commence and end?

For purposes of the period in which the Department must issue a final decision in your appeal under § 4.906:

(a) If you filed your Notice of Appeal and initial Statement of Reasons with MMS before August 13, 1996, your appeal commenced on August 13, 1996;

(b) If you filed your Notice of Appeal or initial Statement of Reasons with MMS after August 13, 1996, under 30 CFR part 290, in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition, revised as of July 1, 1998, your appeal commenced on the date MMS received your Notice of Appeal, or if later, the date MMS received your initial Statement of Reasons;

(c) If you filed your Notice of Appeal under 30 CFR part 290, subpart B, your appeal commenced on the date MMS received your Notice of Appeal.

(d) Your appeal ends on the same day of the month of the 33rd calendar month after your appeal commenced under paragraph (a), (b), or (c) of this section, plus the number of days of any applicable time extensions under § 4.909 or 30 CFR 290.109. If the 33rd calendar month after your appeal commenced does not have the same day of the month as the day of the month your appeal commenced, then the initial 33-month period ends on the last day of the 33rd calendar month.

§ 4.905 What if a due date falls on a day the Department or relevant office is not open for business?

If a due date under this subpart falls on a day the relevant office is not open for business (such as a weekend, Federal holiday, or shutdown), the due date is the next day the relevant office is open for business.

§ 4.906 What if the Department does not issue a decision by the date my appeal ends?

(a) If the IBLA or an Assistant Secretary (or the Secretary or the Director of OHA) does not issue a final decision by the date an appeal ends under § 4.904(d), then under 30 U.S.C. 1724(h)(2), the Secretary will be deemed to have decided the appeal:

(1) In favor of the appellant for any nonmonetary obligation at issue in the appeal, or any monetary obligation at issue in the appeal with a principal amount of less than \$10,000;

(2) In favor of the Secretary for any monetary obligation at issue in the appeal with a principal amount of \$10,000 or more.

(b)(1) If your appeal ends before the MMS Director issues a decision in your

appeal, then the provisions of paragraph (a) of this section apply to the monetary and nonmonetary obligations in the order that you contested in your appeal to the Director.

(2) If the MMS Director issues a decision in your appeal before your appeal ends, and if you appealed the Director's decision to IBLA under 43 CFR part 4, subpart E, then the provisions of paragraph (a) of this section apply to the monetary and nonmonetary obligations in the Director's decision that you contested in your appeal to IBLA.

(3) If the MMS Director issues a decision in your appeal, and if you did not appeal the Director's decision to IBLA within the time required under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998 (for appeals filed before May 13, 1999 or 30 CFR part 290 subpart B (for appeals filed on or after May 13, 1999 and 43 CFR part 4, subpart E, then the MMS Director's decision is the final decision of the Department and 30 U.S.C. 1724(h)(2) has no application.

(c) If the IBLA issues a decision before the date your appeal ends, that decision is the final decision of the Department and 30 U.S.C. 1724(h)(2) has no application. A petition for reconsideration does not extend or renew the 33-month period.

(d) If any part of the principal amount of any monetary obligation is not specifically stated in an order or MMS Director's decision and must be computed to comply with the order or MMS Director's decision, then the principal amount referred to in paragraph (a) of this section means the principal amount MMS estimates you would be required to pay as a result of the computation required under the order, plus any amount due stated in the order.

§ 4.907 What if an IBLA decision requires MMS or a delegated State to recalculate royalties or other payments?

(a) An IBLA decision modifying an order or an MMS Director's decision and requiring MMS or a delegated State to recalculate royalties or other payments is a final decision in the administrative proceeding for purposes of 30 U.S.C. 1724(h).

(b) MMS or the delegated State must provide to IBLA and all parties any recalculation IBLA requires under paragraph (a) of this section within 60 days of receiving IBLA's decision.

(c) There is no further appeal within the Department from MMS's or the State's recalculation under paragraph (b) of this section.

(d) The IBLA decision issued under paragraph (a) of this section together with recalculation under paragraph (b) of this section are the final action of the Department that is judicially reviewable under 5 U.S.C. 704.

§ 4.908 What is the administrative record for my appeal if it is deemed decided?

If your appeal is deemed decided under § 4.906, the record for your appeal consists of:

(a) The record established in an appeal before the MMS Director;

(b) Any additional correspondence or submissions to the MMS Director;

(c) The MMS Director's decision in an appeal;

(d) Any pleadings or submissions to the IBLA; and

(e) Any IBLA orders and decisions.

§ 4.909 How do I request an extension of time?

(a) If you are a party to an appeal subject to this subpart before the IBLA, and you need additional time after an appeal commences for any purpose, you may obtain an extension of time under this section.

(b) You must submit a written request for an extension of time before the required filing date.

(1) You must submit your request to the IBLA at Interior Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, using the U.S. Postal Service, a private delivery or courier service, hand delivery or telefax to (703) 235-8349;

(2) If you file a document by telefax, you must send an additional copy of your document to the IBLA using the U.S. Postal Service, a private delivery or courier service or hand delivery so that it is received within 5 business days of your telefax transmission.

(c) If you are an appellant, in addition to meeting the requirements of paragraph (b) of this section, you must agree in writing in your request to extend the period in which the Department must issue a final decision in your appeal under § 4.906 by the amount of time for which you are requesting an extension.

(d) If you are any other party, the IBLA may require you to submit a written agreement signed by the appellant to extend the period in which the Department must issue a final decision in the appeal under § 4.906 by the amount of time for which you are requesting an extension.

(e) The IBLA has the discretion to decline any request for an extension of time.

(f) You must serve your request on all parties to the appeal.

[FR Doc. 99-11816 Filed 5-12-99; 8:45 am]

BILLING CODE 4310-MR-P



Thursday
May 13, 1999

Part XI

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Parts 1, 12, 23, and 52
Federal Acquisition Regulation; Pollution
Control and Clean Air and Water;
Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 12, 23, and 52**

[FAR Case 97-033]

RIN 9000-A119

**Federal Acquisition Regulation;
Pollution Control and Clean Air and
Water**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to remove Subpart 23.1, 52.223-1, and 52.223-2. Improvements that are being implemented by the Environmental Protection Agency (EPA) will enable it to identify and provide more up-to-date information on facilities that, because of their involvement in criminal violations of the Clean Air Act (CAA) or Clean Water Act (CWA), may not be used in the performance of Government contracts. Although this amendment eliminates the certification burden on offerors and bidders, the proposed changes represent no change to longstanding Federal policy that until such time as EPA determines that the causes giving rise to criminal CAA or CWA violations have been corrected, a contracting officer must not award a contract to be performed by convicted persons at ineligible facilities.

DATES: Comments should be submitted on or before July 12, 1999, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97-033@gsa.gov.

Please cite FAR case 97-033 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to

status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAR case 97-033.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 306 of the Clean Air Act (CAA), 42 U.S.C. 7606, and Section 508 of the Clean Water Act (CWA), 33 U.S.C. 1368, prohibit award of a Federal contract to any person who has been convicted of various violations under the Acts if the convicted person owns, leases or supervises the facility at which the violation(s) occurred, and any part of the contract will be performed at the violating facility. This ineligibility begins the moment a judgment of conviction is entered. The statutes provide that the ineligibility for contract award remains in effect until the EPA Administrator certifies that the conditions giving rise to the conviction have been corrected. To ensure that awards are made only to eligible facilities, FAR Subpart 23.1 provides at section 23.105, that an offeror must certify whether it proposes to use a facility that is on the EPA List of Violating Facilities and that it will notify the contracting officer before award, if it receives from EPA notice that EPA is considering listing the facility (FAR 52.223-1, Clean Air and Water Certification).

The FAR previously has considered different methods of enforcing the CAA and CWA ineligibility provisions. The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355, Section 8301(g), 42 U.S.C. 7606 note) prohibited the use, in commercial item acquisitions, of a certification or a contract clause to implement the otherwise unchanged ineligibility provisions of the two statutes. Section 4301(b) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106) required the Administrator for Federal Procurement Policy to issue for public comment a proposal to remove from the FAR those certification requirements that were not specifically imposed by statute. The FAR published a final rule in the **Federal Register** at 61 FR 233 on January 2, 1997 (FAR Case 96-312), implementing the CAA and CWA amendments for commercial items, but retained the certification for other acquisitions as the least burdensome and most effective means of ensuring that Government contracts were not awarded to a contractor proposing to use, for contract performance, a listed facility (62 FR 233).

This proposed rule would remove FAR Subpart 23.1, the certification at FAR 52.223-1, the contract clause at FAR 52.223-2, Clean Air and Water,

and would provide agency contracting officers with a uniform procedure to determine a persons eligibility for award of a Government contract or subcontract. The same procedure would apply regardless of whether the acquisition is for a commercial item or not. FAR Subpart 9.4 requires that before awarding contracts and approving subcontracts, agency contracting officers must check the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA List). Internet access to the GSA List is available (<http://www.arnet.gov/epl>). Excluded parties whose ineligibility is limited by reason of a CAA or CWA conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation. The textual content of Code H is provided to GSA by the EPA Debarring Official, the Federal official with the delegated responsibility for determining when CAA and CWA-ineligible parties have corrected the conditions giving rise to their criminal convictions.

In the past, certifications served to ensure that bidders and offerors who were convicted of violations of the CAA and CWA identified themselves to Contracting Officers. This mechanism supplemented the GSA List which, because of occasional delays and lapses in communicating criminal conviction information to EPA officials, might not include an offeror or bidder with a recent CAA or CWA conviction. The EPA plans to improve its information systems with a view toward making the CAA and CWA ineligibility data in the GSA List as complete and timely as possible.

By improving its information systems and revising the Cause and Treatment Code, EPA believes that FAR Subpart 23.1 can be removed without having a detrimental effect on the Government's environmental policy. Reliance on the GSA List provides an adequate mechanism for ensuring that agency contracting officers do not award contracts to ineligible offerors. As a result of these developments, the necessity for a certification to achieve compliance with the CAA and CWA ineligibility provisions has been significantly diminished, if not eliminated.

This rule also would remove the contract clause at FAR 52.223-2. This clause states that the contractor agrees to comply with the CAA and CWA. Neither statute requires that such a clause be included in Federal contracts and subcontracts. The elimination of the clause in no way would diminish the Government's ability to enforce the CAA

and CWA requirements that apply to efforts performed under Federal contracts.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because generally less than 50 facilities a year are ineligible for contract award as a result of convictions for violations of the CAA or CWA. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97-033), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the proposed rule would eliminate an information collection requirement approved under OMB Control Number 9000-0021. Accordingly, a request to remove the requirement will be submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 12, 23, and 52

Government procurement.

Dated: May 7, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 12, 23, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 12, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Section 1.106 is amended in the introductory text by removing the word "ten" and adding "10"; and in the table following the introductory paragraph by removing FAR segment "52.223-1" and its corresponding OMB Control Number, "9000-0021".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.503 is amended by revising the introductory text of paragraph (b); removing paragraph (b)(1); redesignating (b)(2) and (b)(3) as (b)(1) and (b)(2), respectively; removing paragraph (b)(4); and redesignating paragraph (b)(5) as (b)(3).

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial items:

* * * * *

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

4. Section 12.504 paragraph (b) is revised to read as follows:

* * * * *

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327, *et seq.*, (see Subpart 22.3) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.1 [Reserved]

5. Subpart 23.1 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.223-1 [Removed and Reserved]

6. Section 52.223-1 is removed and reserved.

52.223-2 [Removed and Reserved]

7. Section 52.223-2 is removed and reserved.

[FR Doc. 99-12154 Filed 5-12-99; 8:45 am]

BILLING CODE 6820-EP-P



Thursday
May 13, 1999

Part XII

Department of the Interior

Fish and Wildlife Service

Migratory Bird Hunting; Intent To Prepare
an Environmental Impact Statement on
White Goose Management; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Notice of Intent To Prepare an Environmental Impact Statement on White Goose Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service or "we") is issuing this notice to advise the public that we are initiating efforts to prepare an Environmental Impact Statement (EIS) that considers a range of management alternatives aimed at addressing population expansion of lesser snow geese, Ross' snow geese, and greater snow geese (white geese). This notice describes possible alternatives, invites public participation in the scoping process for preparing the EIS, and identifies the Service official to whom questions and comments may be directed. Potential sites of public scoping meetings in important white goose migration and wintering areas are yet to be determined. A notice of public meetings with the locations, dates, and times will be published in the **Federal Register**.

DATES: Written comments regarding EIS scoping should be submitted by July 12, 1999, to the address below.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358-1714.

SUPPLEMENTARY INFORMATION: With regard to Mid-continent light geese, because of the high population levels and habitat destruction described below, we believe that management action is necessary. In fact, we promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that

authorized additional methods of take of light geese and established a conservation order for the reduction of the Mid-continent Light Goose Population. In issuing those regulations, we indicated that we would initiate preparation of an EIS beginning in 2000 to consider the effects on the human environment of a range of long-term resolutions for the MCLG population problem. Those regulations were subsequently challenged in Federal District Court by several animal rights groups. Though the judge refused to preliminarily enjoin the program, he did indicate a likelihood that the plaintiffs might prevail on the EIS issue when the lawsuit proceeded. In light of our earlier commitment to prepare an EIS on the larger, long-term program and to preclude further litigation on the issue, we decided to withdraw the regulations and to begin preparation of the EIS now.

Mid-Continent Light Geese

Lesser snow (*Anser c. caerulescens*) and Ross' (*Anser rossii*) geese, that primarily migrate through the Central and Mississippi Flyways, are collectively referred to as Mid-continent light geese (MCLG) because they breed, migrate, and winter in the "Mid-continent" or central portions of North America. They are referred to as "light" geese due to the light coloration of the white-phase plumage form, as opposed to "dark" geese such as white-fronted geese or Canada geese. We include both plumage forms of lesser snow geese (white, or "snow" and dark, or "blue") under the designation light geese.

The total MCLG population is experiencing a high population growth rate and has substantially increased in size within the last 30 years. Potential reasons for this high growth rate include decreased harvest rates, availability of waste grains in agricultural areas, establishment of refuges, and higher survival rates. The total MCLG population is comprised of two population segments; namely the Mid-continent Population (MCP) and the Western Central Flyway Population (WCFP). We use operational surveys conducted annually on wintering grounds to derive a winter index to light goose populations. The winter index of MCP light geese has more than tripled within 30 years from an estimated 800,000 birds in 1969 to approximately

2.6 million birds in 1999 and has increased an average of 5% per year for the last ten years (Abraham et al. 1996, USFWS 1998). The 1999 MCP winter index of 2.6 million geese is comprised of approximately 2.4 million lesser snow geese and 147,000 Ross' geese. The winter index of WCFP light geese has quadrupled in 23 years from 52,000 in 1974 to 216,000 in 1997 (USFWS 1997), and has increased an average of 9% per year for the last ten years (USFWS 1998). Counts of light geese wintering in Mexico are obtained every 3 years, therefore 1997 represents the last year that a total WCFP count was made. The 1997 WCFP winter index of 216,000 geese is comprised of approximately 151,000 lesser snow geese and 65,000 Ross' geese.

The total MCLG population (MCP and WCFP combined), based on the 1997 and 1999 winter indices, is approximately 2.8 million geese (Table 1). In 1991, the Central and Mississippi Flyway Councils jointly agreed to set lower and upper management thresholds for the MCP of snow geese at 1.0 million and 1.5 million, respectively, based on the winter index. Therefore, the current winter index of MCP lesser snow geese far exceeds the upper management threshold established by the Flyway Councils. Segments of the total MCLG population have also exceeded North American Waterfowl Management Plan (NAWMP) population objectives, which are also based on winter indices. The MCP lesser snow goose winter index of 2.4 million birds far exceeds the NAWMP population objective of 1 million birds (USDOI et al. 1998). The lesser snow goose portion of the WCFP light goose winter index is estimated to be 151,000 birds, which exceeds the NAWMP population objective of 110,000 birds (USDOI et al. 1998). The estimate of the Ross' goose component of the total MCLG population winter index (WCFP and MCP combined) is approximately 212,000 birds. This exceeds the NAWMP Ross' goose population objective of 100,000 birds (USDOI et al. 1998). We compare current population levels to NAWMP population objectives to demonstrate that the total MCLG population has increased substantially over what is considered to be healthy population level.

TABLE 1.—COMPONENTS OF THE MID-CONTINENT LIGHT GOOSE POPULATION (MCLG) WINTER INDEX

Species	MCP ^a	WCFP ^b	Total MCLG	Flyway council goal ^c	NAWMP goal ^d		
					MCP	WCFP	Total MCLG
Lesser snow goose	2,429,000	151,000	2,580,000	1.0–1.5 million	1,000,000	110,000	1,110,000

TABLE 1.—COMPONENTS OF THE MID-CONTINENT LIGHT GOOSE POPULATION (MCLG) WINTER INDEX—Continued

Species	MCP ^a	WCFP ^b	Total MCLG	Flyway council goal ^c	NAWMP goal ^d		
					MCP	WCFP	Total MCLG
Ross' goose	146,800	65,000	211,800	N/A ^e	N/A	N/A	100,000
Total	2,575,800	216,000	2,791,800	N/A	N/A	N/A	1,210,000

^a Mid-Continent Population (1999 index).^b Western Central Flyway Population (1997 index).^c Represents lower and upper management thresholds.^d North American Waterfowl Management Plan goals.^e Not applicable; goal not developed.

By multiplying the current MCLG December index of 2.8 million birds by an adjustment factor of 1.6 (Boyd et al. 1982), we derive an estimate of 4.5 million breeding birds in spring. This is corroborated by population surveys conducted on light goose breeding colonies during spring and summer, which suggest that the breeding population size of MCLG is in excess of five million birds (D. Caswell pers. comm.). The estimate of 4.5 million birds does not include non-breeding geese or geese found in unsurveyed areas. Therefore, the total MCLG population currently far exceeds 4.5 million birds.

We believe that the MCLG population has exceeded the long-term carrying capacity of its breeding habitat and must be reduced. These geese have become seriously injurious to their arctic and subarctic habitat and habitat important to other migratory birds. We have described previously (February 16, 1999; 64 FR 7517) how light geese have impacted breeding habitats through their feeding actions, which triggers a series of events that leads to long-term habitat destruction. Batt (1997) summarized the results of numerous studies that have investigated the dynamics of the MCLG population and the impacts it is having on breeding habitats. We believe that MCLG population reduction measures are necessary to prevent further habitat destruction and to protect the remaining habitat upon which numerous wildlife species depend.

Batt (1997) estimated that the MCLG population should be reduced by 50% by 2005. That would suggest a reduction from the 1999 MCLG winter index of approximately 2.8 million birds to approximately 1.4 million birds. Central and Mississippi Flyway Council management thresholds for MCP lesser snow geese (not including WCFP lesser snow or Ross' geese) rests between 1.0 and 1.5 million birds, based on the winter index. Therefore, our goal to reduce the MCLG population to 1.4 million birds by 2005 closely parallels

those established by Flyway Councils and the scientific community. Using previously mentioned conversion factors, a winter index of 1.4 million would translate to a minimum estimate of 2.24 million breeding MCLG in spring. The estimate of 2.24 million birds does not include non-breeding geese or geese found in unsurveyed areas. Therefore, the total MCLG spring population would be much higher. We plan to carefully analyze and assess the MCLG reduction on an annual basis, using the winter index and other surveys, to ensure that the populations are not over-harvested.

Greater Snow Geese

Greater snow geese (*Anser c. atlanticus*) breed in the eastern Arctic of Canada and Greenland and migrate southward through Quebec, New York, and New England to their wintering grounds in the mid-Atlantic U.S. The greater snow goose population has expanded from less than 50,000 birds in the late 1960s to approximately 700,000 today. These estimates are based on operational spring surveys conducted on staging areas in the St. Lawrence Valley. With a growth rate of about 9% per year, the population is expected to reach 1,000,000 by 2002 and 2,000,000 by 2010 (Batt 1998).

Although the greater snow goose population has experienced a high growth rate, studies in the Arctic have not documented extensive damage to breeding habitats as of yet. It is estimated that the population is only about one-half of the carrying capacity of the site of the largest breeding colony on Bylot Island. However, high populations of greater snow geese are negatively impacting natural marshes in the St. Lawrence estuary and some coastal marshes of the Mid-Atlantic U.S. (Batt 1998). The Arctic Goose Habitat Working Group recommended that the population be stabilized by the year 2002 at between 800,000 to 1,000,000 birds (Batt 1998). This strategy is intended to prevent the destruction of arctic habitat that is likely to occur if the

population exceeds the carrying-capacity of breeding areas.

Past Management Actions

We have attempted to curb the growth of white goose populations by increasing bag and possession limits and extending the open hunting season length for white geese to 107 days, the maximum allowed by the Migratory Bird Treaty between the U.S. and Canada. However, due to the rapid rise in white goose numbers and low hunter success rates, the harvest rate (the percentage of the population that is harvested) has declined. The decline in harvest rate indicates that current harvest regulations are not sufficient to stabilize or reduce population growth rates.

In cooperation with our State partners, we have developed several Regional Action Plans (Gulf Coast, Midwest, and Northern Prairie) in the central U.S. to implement land management activities that will assist in reduction of the MCLG population. Such activities include land management, water management, increasing accessibility of State and Federal lands to hunters, and development of public outreach programs. We do not believe that Regional Action Plans alone can achieve MCLG population reduction goals. However, the plans will compliment the management alternative chosen as a result of the EIS process.

On February 16, 1999, we published two rules that authorized new methods of take for white geese (electronic calls and unplugged shotguns; 64 FR 7507), and established a conservation order for the reduction of the MCLG population (64 FR 7517). The new regulations were made available only to States in the Mississippi and Central Flyways. Several animal rights groups subsequently filed a legal challenge to the Environmental Assessment and Finding of No Significant Impact upon which the implementation of the rules were based. Although the judge refused to issue an injunction, he did indicate

a likelihood that plaintiffs might succeed on their argument that an EIS should have been prepared. In order to avoid further litigation, we have decided to withdraw those regulations and initiate preparation of an EIS. The regulations will be withdrawn in a separate rulemaking notice in the **Federal Register**.

Alternatives

We are considering the following alternatives as a result of public comments received on the Environmental Assessment. After the scoping process, we will develop the alternatives to be included in the EIS and base them on the mission of the Service and comments received during scoping. We are soliciting your comments on issues, alternatives, and impacts to be addressed in the EIS.

A. No Action Alternative

Under the No Action Alternative, no additional regulatory methods or direct population control strategies would be authorized. Normal white goose hunting regulations that existed prior to February 16, 1999, would remain in place.

B. New Regulatory Alternatives (Proposed Action)

This alternative seeks to provide new regulatory options to wildlife management agencies that will increase the harvest of white geese above that which results from existing hunting frameworks. This approach may include legalization of additional hunting methods such as electronic calls, unplugged shotguns, expanded shooting hours, and baiting. This alternative also includes establishment of a conservation order in the U.S. to reduce and/or stabilize white goose populations. A conservation order would authorize taking of white geese after the normal framework closing date of March 10, through August 31.

The intent of this alternative is to significantly reduce or stabilize white goose populations without threatening their long-term health. We are confident that reduction or stabilization efforts will not result in populations falling below either the lower management thresholds established by Flyway Councils, or the NAWMP population objectives. Monitoring and evaluation programs are in place to estimate population sizes and will be used to

prevent over-harvest of these populations.

C. Direct Population Control on Wintering and Migration Areas in the U.S.

This alternative would involve direct population control strategies such as trapping and culling programs, market hunting, or other general strategies that would result in the killing of white geese on migration and/or wintering areas in the U.S. Some of these types of control measures could involve disposal of large numbers of carcasses.

D. Seek Direct Population Control on Breeding Grounds by Canada

This alternative, if successful, would involve direct population control strategies, such as trapping and culling programs, market hunting, or other general strategies, that would result in killing of white geese on breeding colonies in Canada. Some of these types of control measures could involve disposal of large numbers of carcasses. We do not have the authority to implement direct population control measures on migration or breeding areas in Canada. Therefore, this alternative would require extensive consultation with Canada in order to urge implementation of control measures on breeding areas. Such measures may or may not involve active U.S. participation.

Issue Resolution and Environmental Review

The primary issue to be addressed during the scoping and planning process for the EIS is to determine which management alternatives for the control of white goose populations will be analyzed. We will prepare a discussion of the potential effect, by alternative, which will include the following areas:

- (1) White goose populations and their habitats.
- (2) Other bird populations and their habitats.
- (3) Effects on other species of flora and fauna.
- (4) Socioeconomic effects.

Environmental review of the management action will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA), as appropriate. This Notice is being furnished in accordance with 40 CFR 1501.7, to obtain suggestions and

information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS. A draft EIS should be available to the public in the fall of 1999.

Public Scoping Meetings

A schedule of public scoping meeting dates, locations, and times is not available at this time. Notice of such meetings will be published in the **Federal Register**.

References Cited

- Abraham, K.F., R.L. Jefferies, R.F. Rockwell, and C. D. MacInnes. 1996. Why are there so many white geese in North America? 7th International Waterfowl Symposium, Memphis, TN.
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Dated: May 7, 1999.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

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S. 531/P.L. 106-26

To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation. (May 4, 1999; 113 Stat. 50)

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